

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 26, NUMBER 9
WEDNESDAY, MARCH 1, 2000

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on March 6, 2000, at 2 p.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1607-1608 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 – March 6, 2000 at 2 p.m., Room 149, Capitol Annex**

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Division of Regulatory Services**

Fertilizer

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

Kentucky Victim and Witness Protection Program

40 KAR 6:020 & E. Funding assistance for child sexual abuse medical examinations. (Deferred from February)

PERSONNEL CABINET

Classified

101 KAR 2:102E. Classified leave administrative regulations. (Deferred from January)

Unclassified

101 KAR 3:015E. Leave administrative regulations for the unclassified service. (Deferred from January)

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Board of Pharmacy

201 KAR 2:030. License transfer. (Not Amended After Hearing)

Board of Medical Licensure

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

201 KAR 9:310. Continuing medical education. (Deferred from June)

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:040. Fees.

FINANCE AND ADMINISTRATION CABINET

Commercial Mobile Radio Service Emergency Telecommunications Board (Deferred from February)

202 KAR 6:010E. Definitions for 202 KAR Chapter 6.

202 KAR 6:020E. CMRS carrier cost recovery.

202 KAR 6:030E. Confidential and proprietary information.

202 KAR 6:040E. Dispute resolution.

202 KAR 6:050E. PSAP certification.

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

Game

301 KAR 2:222E. Waterfowl hunting requirements. (Deferred from February)

301 KAR 2:226E. Youth waterfowl hunting season. (Deferred from February)

**JUSTICE CABINET
Department of Juvenile Justice**

Juvenile Detention Facilities

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.

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.

Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex. (Deferred from February)

501 KAR 6:170. Green River Correctional Complex.

501 KAR 6:999. Corrections secured policies and procedures.

Restricted Custody Center (Deferred from August)

501 KAR 7:010. Definitions.

501 KAR 7:020. Administration; management.

501 KAR 7:040. Personnel.

501 KAR 7:050. Physical plant.

501 KAR 7:060. Security; control.

501 KAR 7:080. Sanitation; hygiene.

501 KAR 7:120. Admission; release.

501 KAR 7:140. Inmate rights.

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

501 KAR 10:010. Definitions.

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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 Juvenile Justice

Child Welfare

505 KAR 1:090E. Supervised placement revocation. (Deferred from February)

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Department of Vehicle Regulation**

Division of Motor Carriers

601 KAR 1:018. Special overweight or overdimensional permits. (Amended After Hearing) (Deferred from February)

**PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission**

Thoroughbred Racing

810 KAR 1:060. Chemical dependency. (Public Hearing Held)

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Department for Medicaid Services
Division of Adult and Child Health**

Maternal and Child Health

902 KAR 4:040 & E. Special Supplemental Nutrition Program for Women, Infants and Children (WIC). (Not Amended After Hearing)

Health Services and Facilities

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

Department for Medicaid Services

Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from October)
907 KAR 1:023. Review and approval of selected therapies as ancillary services in nursing facilities. (Amended After Hearing)
907 KAR 1:044E. Mental health center services. (Deferred from January)
907 KAR 1:070E. Homecare waiver services.
907 KAR 1:072E. Payments for homecare waiver services.
907 KAR 1:090E. Personal care assistance waiver services.
907 KAR 1:092E. Payments for personal care assistance waiver services.
907 KAR 1:155 & E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities.

Payment and Services

907 KAR 3:110E. Community mental health center substance abuse services. (Deferred from January)

Kentucky Children's Health Insurance Program

907 KAR 4:030E. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act. (Deferred from January)

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

Substance Abuse

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

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**

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

921 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from February)
921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.
921 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from February)
921 KAR 2:017E. Kentucky Works supportive services. (Deferred from February)
921 KAR 2:370E. Technical requirements for Kentucky Works. (Deferred from February)

**Department for Social Insurance
Division of Management & Development**

Food Stamp Program

921 KAR 3:020E. Financial requirements.
921 KAR 3:030E. Application process.

Division of Policy Development

Child Welfare

922 KAR 1:100. Agency adoptions.

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

Notice of Intent

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

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

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS
RECEIVED AS OF NOON, FEBRUARY 15, 2000

KENTUCKY BOARD OF SOCIAL WORK

February 14, 2000

- (1) **201 KAR 23:015.** Temporary permission to practice.
- (2) The Kentucky Board of Social Work intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602-0456, Telephone (502) 564-3296, Telefax (502) 564-4818.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Nancy Black at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating temporary permission to practice is KRS 335.070(1).
 - (b) The administrative regulation that the Kentucky Board of Social Work intends to promulgate will amend an existing regulation. It will detail the requirements for temporary permission to practice.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.
 - (d) The benefit expected from this administrative regulation is it will detail the requirements temporary permission to practice the profession.
 - (e) This administrative regulation will be implemented as follows: Licensed social workers will be required to comply with this administrative regulation, and the Kentucky Board of Social Work will enforce the administrative regulation.

February 14, 2000

- (1) **201 KAR 23:070.** Qualifying education and qualifying experience under supervision.
- (2) The Kentucky Board of Social Work intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602-0456, Telephone (502) 564-3296, Telefax (502) 564-4818.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Nancy Black at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating qualifying education and qualifying experience under supervision is KRS 335.070(3), 335.080(1)(c), (3) and 335.100(1)(a), (b), (3).
 - (b) The administrative regulation that the Kentucky Board of Social Work intends to promulgate will amend an existing regulation. It will detail the requirements for education and experience under supervision that will qualify applicants for licensure.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) requires a certified social worker may engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) provides that an applicant for a licensed clinical social worker license to have acquired post-master's experience under appropriate supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) provides that a licensed clinical social worker shall assume responsibility for and supervise the certified social worker's practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, the definitions relating to supervision, the content of a supervisory contract, and the requirements of experience under supervision.
 - (d) The benefit expected from this administrative regulation is it will detail the requirements for education and experience to applicants for

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licensure.

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

February 14, 2000

(1) **201 KAR 23:080**. Code of ethical conduct.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602-0456, Telephone (502) 564-3296, Telefax (502) 564-4818.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Nancy Black at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating a code of ethical conduct is KRS 335.070(3) and 335.150(1)(g).

(b) The administrative regulation that the Kentucky Board of Social Work intends to promulgate will amend an existing regulation. It will detail the requirements for ethical practice within the profession.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 335.150(1)(g) provides that the board may take disciplinary action against an applicant or licensee who has violated the code of ethical conduct as set forth by the board by promulgation of an administrative regulation. This administrative regulation establishes the code of ethical conduct.

(d) The benefit expected from this administrative regulation is a code of ethical conduct will enable practitioners to identify and avoid unethical conduct.

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

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

February 2, 2000

(1) **301 KAR 2:221**, Waterfowl seasons and limits.

(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 March 24, 2000 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 March 24, 2000, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1), 150.600(1), and 50 CFR Parts 20 and 21.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:221 as follows: It will establish season dates and bag limits for the 1999-2000 waterfowl seasons within federal guidelines.

(c) The necessity and function of the proposed administrative regulation is to set waterfowl dates and limits within frameworks established by the U.S. Fish and Wildlife Service.

(d) The benefits expected from the administrative regulation are allowing regulated hunting with sound conservation and management of waterfowl resources.

(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.

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

February 9, 2000

(1) **401 KAR 5:072**, Concentrated animal feeding operations. The subject matter of the administrative regulation to be promulgated is concentrated animal feeding operations.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) Two public hearings to receive oral and written comments on the proposed administrative regulation have been scheduled. The first is March 28, 2000, at 6:30 p.m. (eastern time), at the Western Hills High School, 100 Doctors Drive, Frankfort, Kentucky. The second is March 30, 2000, at 6:30 p.m. (central time) in the Madisonville Technology Center, Byrnes Auditorium, 750 North Laffoon Drive, Madisonville, Kentucky. Persons may also submit written comments on the proposed administrative regulation to the Division of Water at the address given below, by 4:30 p.m. (eastern time) on March 30, 2000.

(4)(a) The Frankfort public hearing will be held if it is requested by at least 10 calendar days prior to March 28. The Madisonville public hearing will be held if it is requested by at least 10 calendar days prior to March 30. The request must be in writing, by 5 persons, or by an administrative body, or an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 28, 2000 (Frankfort hearing) and at least 10 days prior to March 30, 2000 (Madisonville hearing), the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing or submit written comments should mail or fax their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, Phone (502) 564-3410, FAX (502) 564-0111.

(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 Water at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of administrative regulation relating to concentrated animal feeding operations (CAFOs) is KRS 224.10-100, 224.16-050, 224.20-100, 224.20-110, 224.20-120, 224.70-100, 224.70-110, and 33 USC 1342.

(b) The administrative regulation that the Natural Resources and Environmental Protection, Division of Water, intends to promulgate will be a new regulation for the permitting of concentrated animal feeding operations. It will require integrator liability and siting criteria for concentrated animal feeding operations. Concentrated animal feeding operations is defined in 401 KAR 5:002.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth conditions applicable to all KPDES permits from concentrated animal feeding operations and procedures for establishing and calculating permit conditions relating to integrator liability and siting.

(d) The expected benefits from the administrative regulation are: The citizens of the Commonwealth will be assured that the operation of concentrated animal feeding operations will protect the waters of the Commonwealth.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this regulation, the permitting of these operations will be governed by the provisions contained in this regulation. Copies of the emergency regulation that contain the cabinet's current requirements are available from the Division of Water at the above address.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality**

February 14, 2000

(1) **401 KAR 51:001**, Definitions and abbreviations of terms used in 401 KAR Chapter 51. The subject matter of this administrative regulation is the establishment of definitions for terms used in 401 KAR Chapter 51.

(2) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 10 a.m. (eastern time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to March 21, 2000, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to March 21, 2000, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel

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Lane, Frankfort, Kentucky 40601. The FAX number is (502) 573-3787. The telephone number is (502) 573-3382, ext. 338.

(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 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 for Air Quality at the address listed above.

(7) Information relating to the proposed amendments to this administrative regulation.

(a) The statutory authority for the promulgation of the amendments to this administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410 and 7511a.

(b) The amendments to the administrative regulation that the Division for Air Quality intends to promulgate will add terms used in new administrative regulations that will amend the Kentucky State Implementation Plan (SIP) to include requirements for electric generating units to reduce the emissions of oxides of nitrogen (NOx) to a statewide mean of 0.25 pounds per million BTU heat input by May 1, 2003.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will provide for the defining of terms to be used in 401 KAR Chapter 51. It is being amended to include new terms used to implement the administrative regulations that will amend the Kentucky SIP to achieve attainment of the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone in the Louisville nonattainment area. Additional amendments are being proposed to bring this administrative regulation into compliance with KRS Chapter 13A drafting requirements.

(d) The expected benefit from the amendments to this administrative regulation is that Kentucky's SIP will demonstrate compliance with the 1-hour NAAQS for ozone in the Louisville nonattainment area and thus prevent this area from being redesignated from moderate nonattainment to serious nonattainment. The amendment will also bring this administrative regulation into compliance with KRS Chapter 13A drafting requirements.

(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the administrative regulations in 401 KAR Chapter 51 will use these definitions as part of the existing regulatory program.

February 14, 2000

(1) **401 KAR 51:200**, General provisions for regional NOx requirements. The subject matter of this administrative regulation is the establishment of general provisions for electric generating units to reduce emission of oxides of nitrogen (NOx) that contribute to the formation of ground-level ozone.

(2) The Division for Air Quality intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 10 a.m. (eastern time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to March 21, 2000, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to March 21, 2000, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The FAX number is (502) 573-3787. The telephone number is (502) 573-3382, ext. 338.

(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 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 for Air Quality 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 224.10-100, 224.20-100, 224.20-110, 42 USC 7410 and 7511a.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. The proposed administrative regulation will establish general provisions for electric generating units to reduce NOx emissions to a statewide mean of 0.25 pounds per million BTU heat input by May 1, 2003.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will establish general provisions for electric generating units to reduce NOx emissions that contribute to the formation of ground-level ozone in Kentucky counties that do not meet the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone.

(d) The expected benefit from this administrative regulation is that Kentucky's State Implementation Plan (SIP) will be amended to include requirements that will reduce the NOx emissions from Kentucky's electric utility industry in order to achieve the 1-hour NAAQS for ozone in the Louisville nonattainment area.

(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of NOx sources shall comply with the provisions of 401 KAR 51:200 as part of the existing regulatory program.

February 14, 2000

(1) **401 KAR 51:210**, Regional NOx emission limits. The subject matter of this administrative regulation is the establishment of emission limits for electric generating units to reduce emission of oxides of nitrogen (NOx) that contribute to the formation of ground-level ozone.

(2) The Division for Air Quality intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 10 a.m. (eastern time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to March 21, 2000, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to March 21, 2000, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The FAX number is (502) 573-3787. The telephone number is (502) 573-3382, ext. 338.

(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 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 for Air Quality at the address listed above.

(7) Information relating to the proposed amendments to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410 and 7511a.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. The proposed administrative regulation will establish requirements for electric generating units to reduce NOx emissions to a statewide mean of 0.25 pounds per million BTU heat input by May 1, 2003.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for electric generating units to reduce NOx emissions that contribute to the formation of ground-level ozone in Kentucky counties that do not meet the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone.

(d) The expected benefit from this administrative regulation is that Kentucky's State Implementation Plan (SIP) will be amended to include requirements that will reduce the NOx emissions from Kentucky's electric utility industry in order to achieve the 1-hour NAAQS for ozone in the Louisville nonattainment area.

(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of NOx sources shall comply with the provisions of 401 KAR 51:210 as part of the existing regulatory program.

February 14, 2000

(1) **401 KAR 51:220**, Averaging procedures for NOx emission reductions. The subject matter of this administrative regulation is the establishment of a program that allows for the averaging of emissions of oxides of nitrogen (NOx) from electric generating units to reduce NOx emissions that contribute to the formation of ground-level ozone.

(2) The Division for Air Quality intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 10 a.m. (eastern time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to March 21, 2000, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to March 21, 2000, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The FAX number is (502) 573-3787. The telephone number is (502) 573-3382, ext. 338.

(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 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 for Air Quality 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 224.10-100, KRS 224.20-100, KRS 224.20-110, 42 USC 7410 and 7511a.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. The proposed administrative regulation will establish procedures for the averaging of NOx emissions from Kentucky's electric utility industry.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will establish procedures for the averaging of NOx emissions from sources that are subject to a State Implementation Plan amendment which calls for a statewide mean NOx emission rate from electric generating units of 0.25 pounds per million BTU input to be achieved no later than May 1, 2003.

(d) The expected benefit from this administrative regulation is that it will enable Kentucky's electric utilities to achieve more efficiently and effectively a statewide mean NOx emission rate of 0.25 pounds per million BTU heat input by May 1, 2003, encourage cost effective approaches for achieving the proposed air quality requirements, and maintain the enforceability and accountability of the proposed economic incentives.

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(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of electric generating units shall comply with the provisions of 401 KAR 51:220 as part of the existing regulatory program.

JUSTICE CABINET Department of Corrections

February 11, 2000

(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 March 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000, 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, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Phone (502) 564-2024, FAX (502) 564-6494.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. Staff Training and Development (KSR 04-00-02) shall be amended to conform policy with required LRC language.
2. Management Information System (KSR 05-00-03) shall be amended to conform policy with required LRC language and reorganize policy to where it is clearer to the reader.
3. Handling of PCB Articles and Containers (KSR 07-00-04) shall be deleted since the last article or container, which contained PCB, was removed off institutional grounds in 1990.
4. Proper Removal of Transformer (KSR 07-00-05) shall be deleted as this policy covers PCB transformers and the last transformer that contained PCB was removed off institutional grounds in 1990.
5. Segregation - Convalescent Care Unit (KSR 10-01-07) shall be deleted since this unit was closed as a geriatrics area and changed into a reception and orientation area with the opening of the nursing care facility.
6. Unit E - 1 Convalescent Care (KSR 10-02-03) shall be deleted since this unit was closed and demolished in 1996 to make way for the construction of the Corrections Psychiatric Treatment Unit.
7. Hospital Operations, Rules and Regulations (KSR 13-00-02) shall be deleted since the hospital floor at the institution was closed upon the opening of the nursing care facility.
8. Inmate Grievance Procedure (KSR 14-00-04) shall be deleted and the institution shall comply with the procedures set forth in Corrections Policy and Procedure 14.6 Inmate Grievance Procedure.
9. Inmate Library Services (KSR 21-00-02) shall be amended to conform with LRC language requirements, add a section on inter-library loans, and add the requirements for the librarian and inmate aides.
10. Library Services for Special Management Unit (SMU) (KSR 21-00-03) shall be amended to comply with required LRC language with minor word changes to clarify the process.

(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.

February 11, 2000

(1) **501 KAR 6:080**, Classification Manual.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000, the public hearing will be canceled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Phone (502) 564-2024, FAX (502) 564-6494.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:080, as follows:

1. Offender Records Manual shall be deleted as this manual was never filed with LRC.
2. The Stock Procedures Manual shall be deleted as this manual was never filed with LRC.
3. The Dietitian Manual shall be deleted as this manual was never filed with LRC.

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

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

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

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

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

CABINET FOR WORKFORCE DEVELOPMENT

January 21, 2000

(1) **780 KAR 3:065**, Certified and equivalent service administrative regulations.

(2) The Cabinet for Workforce Development 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 amendment to the administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatrick, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@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 Cabinet for Workforce Development at the address listed above.

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

(a) The statutory authority for the promulgation of an administrative regulation relating to certified and equivalent employees is KRS 151B.035.

(b) The administrative regulation that the Cabinet for Workforce Development, intends to promulgate will not amend an existing regulation. It will implement the following provisions: Workplace Violence Policy; Kentucky Employee Assistance Program; Issuance of Paychecks to State Employees; and the Workers' Compensation Fund and Program for Certified and Equivalent Employees.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation is necessary to provide certain benefits and protections to certified and equivalent employees within the Department of Adult Education and Literacy and the Department for Technical Education comparable to those available to other employees in state government.

(d) The benefits expected from administrative regulation are: The certified and equivalent employees will enjoy certain benefits and protections comparable to those available to other state government employees.

(e) The Cabinet for Workforce Development will be responsible for implementing the proposed administrative regulation.

January 21, 2000

(1) **780 KAR 3:071**, Repeal of 780 KAR 3:070.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.

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

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

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2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatrick, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@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 Cabinet for Workforce Development at the address listed above.
- (7) Information relating to the proposed amendment to the administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the attendance, compensatory time, and leave for certified and equivalent employees is KRS 151B.035.
- (b) The administrative regulation that the Cabinet for Workforce Development, intends to promulgate will repeal 780 KAR 3:070, Attendance, compensatory time, and leave for certified and equivalent employees.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will repeal 780 KAR 3:070 governing attendance, compensatory time, and leave for the certified and equivalent employees under KRS Chapter 151B.
- (d) The benefits expected from administrative regulation are that the regulation will be replaced by a new administrative regulation consistent with that being simultaneously promulgated for the certified and equivalent employees.
- (e) The administrative regulation will be implemented as follows: Upon approval by the State Board for Adult and Technical Education, the proposed changes will repeal the attendance, compensatory time, and leave plan for certified and equivalent employees as soon as administratively feasible.

January 21, 2000

- (1) **780 KAR 3:072.** Attendance, compensatory time, and leave administrative regulations.
- (2) The Cabinet for Workforce Development intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatrick, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@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 Cabinet for Workforce Development at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the certified and equivalent attendance, compensatory time, and leave regulations is KRS 151B.035, Chapter 337, 29 USC §201, et seq. and 29 USC §2601, et seq.
- (b) The administrative regulation that the Cabinet for Workforce Development intends to promulgate will replace 780 KAR 3:070, Attendance, compensatory time, and leave. It will:
1. Provide an additional 3 annual leave days per year for employees with 20 or more years of service.
 2. Provide that retired employees who return to state service shall begin new service credit for leave accumulation purposes.
 3. Allow agencies to require the use of compensatory time before annual time under certain circumstances.
 4. Clarify the basis for withholding payment for annual leave upon resignation or retirement.
 5. Provide a 1-time award of 10 days of sick leave when an employee completes 20 years of service.
 6. Clarify the circumstances for granting or requiring the use of sick leave.
 7. Provide for fairness in using family and medical leave.
 8. Allow approval of sick leave without pay for employees not eligible for family and medical leave.
 9. Clarify eligibility for health and life insurance benefits.
 10. Establish a policy on leave in the event of adverse weather conditions.
 11. Establish a policy on leave for blood donation.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will govern attendance, compensatory time, and leave for all positions in the certified and equivalent service of state government and provide recognition for longevity. The regulation will also clarify the circumstances in which family and medical leave may be used.
- (d) The benefits expected from administrative regulation are: Elimination of conflicts in the current regulation and clarification and establishment of the benefits noted in paragraph 7(b)1 through 11, above.
- (e) The administrative regulation will be implemented as follows: Upon approval by the State Board for Adult and Technical Education, the proposed changes will replace 780 KAR 3:070, Attendance, compensatory time, and leave administrative regulations, as soon as administratively feasible.

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- (1) **780 KAR 3:075.** Sick leave sharing procedures.
- (2) The Cabinet for Workforce Development intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatrick, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@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 Cabinet for Workforce Development at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to sick leave sharing procedures for certified and equivalent employees is KRS 151B.035.
- (b) The administrative regulation that the Cabinet for Workforce Development intends to promulgate will not amend an existing regulation. It will establish sick leave sharing procedures for certified and equivalent employees.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will establish sick leave sharing procedures similar to that governing the classified service of state government.
- (d) The benefits expected from administrative regulation are: Establishment of sick leave sharing procedures for certified and equivalent employees.
- (e) The administrative regulation will be implemented as follows: Upon approval by the State Board for Adult and Technical Education, the proposed changes will implement 780 KAR 3:075, Sick leave sharing procedures, as soon as administratively feasible.

January 21, 2000

- (1) **780 KAR 3:100.** Employee actions.
- (2) The Cabinet for Workforce Development intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatrick, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@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 Cabinet for Workforce Development at the address that is listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to employee actions for all full-time and part-time unclassified employees, certified and equivalent staff is KRS 151B.035.
- (b) The administrative regulation that the Cabinet for Workforce Development intends to promulgate will amend 780 KAR 3:100, Employee actions. It will:
 1. Provide that part-time hourly workers who have not worked for 6 months (rather than 2 consecutive years) shall be deemed to have resigned.
 2. Reflect the change in administrative structure due to the creation of separate departments for Technical Education and Adult Education and Literacy.
- (c) The benefits expected from the proposed administrative regulation are as follows: To provide for timely removal of part-time hourly workers who are not actually working and to conform the language of the regulation to the present administrative structure.
- (d) The administrative regulation will be implemented as follows: Upon approval by the State Board for Adult and Technical Education, the proposed changes will replace 780 KAR 3:100, Employee actions, as soon as administratively feasible.

January 21, 2000

- (1) **780 KAR 6:005.** Unclassified service administrative regulations.
- (2) The Cabinet for Workforce Development 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 amendment to the administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatruck, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatruck@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 Cabinet for Workforce Development at the address listed above.
- (7) Information relating to the proposed amendment to the administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to unclassified service administrative regulations is KRS 151B.035.
- (b) The administrative regulation that the Cabinet for Workforce Development, intends to promulgate will not amend an existing regulation. It will implement the following provisions: Workplace Violence Policy; Kentucky Employee Assistance Program; Issuance of Paychecks to State Employees; and the Workers' Compensation Fund and Program for Unclassified Service Employees.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation is necessary to provide certain benefits and protections to unclassified service employees under KRS 151B.035 comparable to those available to other employees in state government.
- (d) The benefits expected from administrative regulation are: The unclassified service employees will enjoy certain benefits and protections comparable to those available to other state government employees.
- (e) The Cabinet for Workforce Development will be responsible for implementing the proposed administrative regulation.

January 21, 2000

- (1) **780 KAR 6:061**, Repeal of 780 KAR 6:060.
- (2) The Cabinet for Workforce Development intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatruck, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatruck@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 Cabinet for Workforce Development at the address listed above.
- (7) Information relating to the proposed amendment to the administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the attendance, compensatory time, and leave for unclassified service is KRS 151B.035.
- (b) The administrative regulation that the Cabinet for Workforce Development, intends to promulgate will repeal 780 KAR 6:060, Attendance, compensatory time, and leave for unclassified service.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will repeal 780 KAR 6:060 governing attendance, compensatory time, and leave for the unclassified service employees under KRS Chapter 151B.
- (d) The benefits expected from administrative regulation are that the regulation will be replaced by a new administrative regulation consistent with that being simultaneously promulgated for the unclassified service.
- (e) The administrative regulation will be implemented as follows: Upon approval by the Governor and review by the State Board for Adult and Technical Education, the proposed changes will repeal the attendance, compensatory time, and leave plan for unclassified service as soon as administratively feasible.

January 21, 2000

- (1) **780 KAR 6:062**, Attendance, compensatory time, and leave administrative regulations.
- (2) The Cabinet for Workforce Development intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatruck, General

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Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@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 Cabinet for Workforce Development at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the certified and equivalent attendance, compensatory time, and leave regulations is KRS 151B.035, Chapter 337, 29 USC §201, et seq. and 29 USC §2601, et seq.

(b) The administrative regulation that the Cabinet for Workforce Development intends to promulgate will replace 780 KAR 6:060, Attendance, compensatory time, and leave. It will:

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

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

(d) The benefits expected from administrative regulation are: Elimination of conflicts in the current regulation and clarification and establishment of the benefits noted in paragraph 7(b)1 through 11, above.

(e) The administrative regulation will be implemented as follows: Upon approval by the State Board for Adult and Technical Education, the proposed changes will replace 780 KAR 6:060, Attendance, compensatory time, and leave administrative regulations, as soon as administratively feasible.

January 21, 2000

(1) **780 KAR 6:065.** Sick leave sharing procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 2000 at 1 p.m. in the Cabinet for Workforce Development Board Room, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sherry R. Deatrick, General Counsel, Kentucky Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-9990, e-mail: SherryR.Deatrick@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 Cabinet for Workforce Development at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to sick leave sharing procedures for unclassified employees is KRS 151B.035.

(b) The administrative regulation that the Cabinet for Workforce Development intends to promulgate will not amend an existing regulation. It will establish sick leave sharing procedures for certified and equivalent employees.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation will establish sick leave sharing procedures similar to that governing the unclassified service of state government pursuant to KRS 18A.197.

(d) The benefits expected from administrative regulation are: Establishment of sick leave sharing procedures for unclassified employees under KRS 151B.035.

(e) The administrative regulation will be implemented as follows: Upon approval by the State Board for Adult and Technical Education, the proposed changes will implement 780 KAR 6:065, Sick leave sharing procedures, as soon as administratively feasible.

Department of Vocational Rehabilitation

February 1, 2000

(1) **781 KAR 1:010.** Department of Vocational Rehabilitation appeal procedures.

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21,

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2000, at 10 a.m. eastern time, in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: George Parsons, Staff Assistant, Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601, Phone (502) 564-4440, FAX (502) 564-6745.

(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 Vocational Rehabilitation at the address listed above.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in alternative format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Department of Vocational Rehabilitation regulations may call toll free 1-800-372-7172 (V/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:010 as follows:

1. Section 1 will be amended to delete "Agency" from the definitions.
2. A new Section 2 will be added to provide for administrative reviews.
3. A new Section 3 will be added to provide for mediation as required by the 1998 amendments to the Federal Rehabilitation Act.
4. The method for requesting a hearing will be amended to exclude voice mail and electronic mail transmissions.

5. The appeal time and hearing procedures section will be amended to provide a 60 day time limitation for appeal rights. The section will be further amended to select hearing officers from a pool in the Administrative Office of the Attorney General who are approved by the Statewide Council for Vocational Rehabilitation.

6. Sections 5 and 6 will be deleted and the department appeals will be conducted pursuant to KRS Chapter 13B.

(c) The necessity and function of the proposed administrative regulation is as follows: Both the federal mandate and KRS Chapter 13B require administrative appeal procedures. The federal mandate further requires mediation procedures. The department has found that an informal administrative review is an effective method for resolving disputes. KRS Chapter 13A requires that those procedures be promulgated as administrative regulations. This amendment prescribes uniform procedures for administrative reviews, mediation and appeals.

(d) The benefits expected from administrative regulation are: Applicants and eligible individuals will have access to informal dispute resolution procedures. The department will use hearing officers from the Administrative Office of the Attorney General who will conduct appeals pursuant to KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: The department will maintain a list of qualified and trained mediators. Any applicant or eligible individual may request an administrative review, mediation, appeal or all any combination of these dispute resolution procedures. Staff will advise applicants and eligible individuals of the entitlements under this administrative regulation at every step in the rehabilitation process. Hearing officers, approved by the Statewide Council for Vocational Rehabilitation will conduct hearings pursuant to KRS Chapter 13B.

February 1, 2000

(1) **781 KAR 1:050**, Carl D. Perkins Comprehensive Rehabilitation Center.

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 10 a.m. eastern time, in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: George Parsons, Staff Assistant, Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601, Phone (502) 564-4440, FAX (502) 564-6745.

(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 Vocational Rehabilitation at the address listed above.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in alternative format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Department of Vocational Rehabilitation regulations may call toll free 1-800 372-7172 (V/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:050 as follows:

1. The department will revise Section 1, Definitions, to delete "expulsion."

2. Section 2 will be amended to clarify the applicant or eligible individual's appeal rights. Section 2 will be amended to require that the individual agree to and abide by the terms of the individualized employment plan and the individualized behavior management plan as appropriate, as a condition for admission.

3. Section 4 will be amended to delete references to absence or tardy as a reason for disciplinary action.

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4. Section 5 will be amended to delete suspensions and expulsions. The section will instead deal with due process provisions.

5. Section 6 dealing with attendance policy is being deleted in its entirety.

(c) The necessity and function of the proposed administrative regulation is as follows: The policies are being replaced to allow rehabilitation programs to be more individualized and to allow applicants and eligible individuals more flexibility in pursuing their individualized plans for employment.

(d) The benefits expected from administrative regulation are: Services for applicants and eligible individuals at the Carl D. Perkins Comprehensive Rehabilitation Center will be more streamlined and individualized to meet customer needs.

(e) The administrative regulation will be implemented as follows: As a condition for admission, individuals will be advised of their responsibilities to abide by their individualized plans for employment and their individualized behavior management plans. The applicant or eligible individual may appeal any denial of admission or any disciplinary action resulting from failure to abide by the individualized plans pursuant to 781 KAR 1:010.

Department for the Blind

February 10, 2000

(1) **782 KAR 1:040**, Department for the Blind appeal procedures.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 2000, at 10 a.m. eastern time, in the first floor conference room at the McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 2000 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sue G. Simon, Department for the Blind, 209 Saint Clair Street, Frankfort, Kentucky 40601, Phone (502) 564-4754, FAX (502) 564-2951.

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

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

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

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

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

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in alternative format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Department for the Blind regulations may call toll free 1-800 321-6668 (V) or 1-502-564-2929 (TTY).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 163.470(5).

(b) The administrative regulation that the department intends to promulgate will amend 782 KAR 1:040 as follows:

1. Section 1 will be amended to conform terminology to the federal Rehabilitation Act Amendments of 1998.

2. A new Section 2 will be added to provide for mediation as required by the Rehabilitation Act Amendments of 1998.

3. A new Section 3 will amend the method for requesting a hearing to exclude voice mail and electronic mail transmissions.

4. A new Section 5 will amend the appeal time and hearing procedures to provide a 60 day limitation period for appeal rights.

5. Section 5 will be further amended to select hearing officers on a random basis from a pool in the Administrative Hearings Division of the Office of the Attorney General who are approved by the department's State Rehabilitation Council.

6. The existing Sections 5 and 6 will be deleted as the department's appeals will be conducted pursuant to KRS Chapter 13B.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Both the federal mandate, Rehabilitation Act Amendments of 1998, and the state law, KRS Chapter 13B, require administrative appeal procedures. The federal mandate further requires the availability of a mediation process as part of its appeal procedures. KRS Chapter 13A requires that those procedures be promulgated as administrative regulations. This amendment prescribes uniform procedures for mediation and appeals.

(d) The benefits expected from administrative regulation are: Applicants and eligible individuals will have access to informal dispute resolution procedures. The department will use hearing officers from the Administrative Hearings Division of the Office of the Attorney General who will conduct appeals pursuant to KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: The department will maintain a list of qualified and trained mediators. Any applicant or eligible individual may request either mediation or a hearing or may utilize both of these dispute resolution procedures if necessary. Staff will advise applicants and eligible individuals of the entitlements under this administrative regulation at each step in the rehabilitation process. Hearing officers, approved by the Department for the Blind State Rehabilitation Council, will conduct hearings pursuant to KRS Chapter 13B.

Department for Employment Services

January 21, 2000

(1) **787 KAR 1:210**, Employer contribution rates.

(2) The Cabinet for Workforce Development, Department for Employment Services, Division of Unemployment Insurance, 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 March 23, 2000, 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, 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

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least 10 days prior to March 23, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Margaret Whittet, Commissioner, Department for Employment Services, Cabinet for Workforce Development, 275 East Main Street, 2nd Floor West, Frankfort, Kentucky 40621, Phone: (502) 564-5331, Fax: (502) 564-7452.

(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 Employment Services, 275 East Main Street, 2nd Floor East, Frankfort, Kentucky 40621.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to claimant's reporting requirements is KRS 151B.020 and 341.115.

(b) The administrative regulation that the Department for Employment Services intends to promulgate will amend 787 KAR 1:210, Employer contribution rates. This amendment will eliminate the need to amend this regulation annually in order to publish the unemployment tax rate schedule determined to be in effect in each year by the Secretary of the Cabinet for Workforce Development in accordance with KRS 341.270, by providing instead for this publication to take place via the annual "Notice of Contribution Rate" issued by the department of all active liable employers.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation provides the method for publication of the unemployment tax rate schedule in effect each year.

(d) The benefit expected from this administrative regulation is: This proposed amendment to the administrative regulation would eliminate the need for annual amendments in the future, resulting in savings of time and efficiency for the promulgating agency, the Legislative Research Commission, and the legislative committees with oversight responsibility.

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

February 11, 2000

(1) **803 KAR 2:180.** Recordkeeping; statistics.

(2) The Kentucky Labor Cabinet 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 March 29, 2000, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 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, or 1 person representing the administrative body or association, agrees 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 March 29, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Labor Cabinet intends to promulgate will amend 803 KAR 2:180, as follows: This revision will amend the administrative regulation to update the reference in Section 5 for the "Workers Compensation - First Report of Injury or Illness," changing "SF1" to "IA-1," and correct typing errors in Section 8 changing "Commission of Department of Workplace Standards" to "Commissioner of Department of Workplace Standards," a reference in paragraph (4) which now references Section 5, but should reference Section 3.

(c) The necessity and function of the proposed administrative regulation is to correct minor errors in the administrative regulation that mandates the recordkeeping and reporting by employers covered under KRS Chapter 338 as necessary and appropriate for the enforcement of KRS Chapter 338, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics.

(d) The benefits expected from the proposed amendment to the administrative regulation are that the revisions correct minor errors in the original administrative regulation making it easier to understand and bring it in line with the Code of Federal Regulations on which it is based.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

January 27, 2000

- (1) **806 KAR 12:095**, Unfair claims settlement practices for property and casualty insurers.
- (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 March 21, 2000, at 11:30 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 March 21, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Vicky C. Horn, 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.
 - (b) The administrative regulation that the department intends to promulgate amends an existing regulation. It will add the definition of "comparable vehicle to Section 7, Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. A provision will be added so that the claimant will be provided, upon his or her request, a copy of all documentation used in the evaluation of a total loss. The local market area will be expanded so that it is no longer constrained by the boundaries of the Commonwealth. First and third-party losses will be evaluated in the same manner.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 requires the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of this code. This administrative regulation is necessary to assist adjusters and consumers to more accurately determine the cost of a comparable motor vehicle in the local market area or to determine statistically valid fair market values.
 - (d) The benefits expected from the administrative regulation are as follows: This administrative regulation will assist the industry to better serve the consumer by being able to arrive at better estimates of the cost of a comparable vehicle in the local market area or the fair market value of a comparable vehicle.
 - (e) The administrative regulation will be implemented as follows: Insurers will be required to disclose documentation of the evaluation of a total loss to the claimant upon request. The insurer may expand a search for a comparable vehicle beyond the Commonwealth boundaries. The insurer will evaluate first and third party losses in the same manner.

February 4, 2000

- (1) **806 KAR 38:091**, Repeal of 806 KAR 38:090.
- (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 March 21, 2000 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 March 21, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Charlette K. 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 304.38-150.
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing regulation. It will repeal 806 KAR 38:090, establishing the procedures and requirements of a health maintenance open enrollment period.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.38-150 authorized the Commissioner of Insurance to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304, Subtitle 38. Prior to the 1998 Kentucky General Assembly, KRS 304.38-080(3) required a health maintenance organization to have an open enrollment period. The 1998 Kentucky General Assembly amended KRS 304.38-080 to abolish the requirement for open enrollment. Therefore, the regulation establishing the procedures and requirements of that enrollment period is no longer necessary and must be repealed. This administrative regulation is necessary to repeal 806 KAR 38:090.
 - (d) The benefits expected from the administrative regulation are as follows: This administrative regulation will repeal 806 KAR 38:090 which established the procedures and requirements of a health maintenance organization's open enrollment period. This administrative regulation is no longer necessary after the 1998 Kentucky General Assembly's amendment of KRS 304.38-080 to abolish the requirement for open

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enrollment. This administrative regulation will improve the coherence and readability of KRS Chapter 304, Subtitle 38 and the administrative regulations which implement that subtitle.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be implemented by repealing 806 KAR 38:090. No longer will there be procedures and requirements of a health maintenance organization's open enrollment period.

Kentucky Racing Commission

February 10, 2000

(1) **810 KAR 1:009**, Jockeys and apprentices.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (606) 246-2040. Fax: (606) 246-2039.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 810 KAR 1:009, Jockeys and apprentices. It will require all jockeys to wear safety helmets that meets a standard set by the American Society of Testing and Materials and certified by the Safety Equipment Institute.

(c) The necessity and function of the proposed administrative regulation is as follows: The changes in this regulation will help protect the jockeys from head trauma resulting from horse related accidents.

(d) The benefits expected from administrative regulation are: The required safety helmet will provide better protection for the jockeys resulting in fewer injuries and less serious injuries.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

February 10, 2000

(1) **810 KAR 1:018**, Medication; testing procedures.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (606) 246-2040 Fax: (606) 246-2039.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.215, 230.260(1), (2), (3), (6), (7), and 230.320(1).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 810 KAR 1:018, Medications; testing procedures. It will implement a new equine drug testing program at the Kentucky thoroughbred race tracks and will allow the stewards to refer disputes involving the use of therapeutic medications directly to the Racing Commission for disposition.

(c) The necessity and function of the proposed administrative regulation is as follows: Will provide fair and enforceable rules and a first-class drug testing system for the state.

(d) The benefits expected from administrative regulation are: Will provide a comfort level for the trainers and owners that participate in Kentucky racing.

(e) The administrative regulation will be implemented as administratively permitted.

February 10, 2000

(1) **810 KAR 1:026**, Racing associations.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

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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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (606) 246-2040. Fax: (606) 246-2039.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.215(2), 230.225(1), and 230.260(3), (6).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 810 KAR 1:026, Racing associations. It will require anyone that exercises a horse during training hours or accompanies a horse to the starting gate during racing hours to wear safety helmets that meets a standard set by the American Society of Testing and Materials and certified by the Safety Equipment Institute.

(c) The necessity and function of the proposed administrative regulation is as follows: The changes in this regulation will help protect individuals from head trauma resulting from horse related accidents.

(d) The benefits expected from administrative regulation are: The required safety helmet will provide better protection for any individual riding a horse on the track resulting in fewer injuries and less serious injuries.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

February 10, 2000

(1) **811 KAR 1:005. Definitions.**

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone (606) 246-2040. Fax (606) 246-2039.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3), (4), and (7).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:005, Definitions. It will clarify the definition of declarations.

(c) The necessity and function of the proposed administrative regulation is as follows: To update the definition of the term declarations.

(d) The benefits expected from administrative regulation are: To make the language easier and clearer to understand.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

February 10, 2000

(1) **811 KAR 1:015. Race officials.**

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone (606) 246-2040. Fax (606) 246-2039.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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KRS 230.240(1), 230.260(3), and 230.310.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:015, Race officials. It will redefine the language of a bleeder being placed on and removed from the veterinarian's list.

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify when a horse that is a bleeder is to be placed on the veterinarian's list and then removed from the veterinarian's list.

(d) The benefits expected from administrative regulation are: By amending this regulation to read the same as the thoroughbred regulation regarding bleeders will make it easier for the owners and trainers in understanding the procedure for bleeders.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

February 10, 2000

(1) **811 KAR 1:020**, Registration and identification of horses.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone (606) 246-2040. Fax (606) 246-2039.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:020, Registration and identification of horses. It will indicate in the racing program trotters that are racing with hobbles.

(c) The necessity and function of the proposed administrative regulation is as follows: To inform the betting public if a trotter will be racing with hobbles.

(d) The benefits expected from administrative regulation are: This will be of benefit to the betting public when they are handicapping a race.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

February 10, 2000

(1) **811 KAR 1:055**, Declaration to start; drawing horses.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone (606) 246-2040. Fax (606) 246-2039.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3), (4), and (7).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:055, Declaration to start; drawing horses. It will update language that is outdated.

(c) The necessity and function of the proposed administrative regulation is as follows: To update the language to conform to the rules of the United States Trotting Association.

(d) The benefits expected from administrative regulation are: Updating this regulation will help us be more uniform with other states that have standardbred racing.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

February 10, 2000

(1) **811 KAR 1:075**, Racing and track rules.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

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

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone (606) 246-2040. Fax (606) 246-2039.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing," or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3), (4), and (7).
- (b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:075, Racing and track rules. It will deal with making a break or going off stride and a horse in the current program getting loose on the track.
- (c) The necessity and function of the proposed administrative regulation is as follows: Changes will clearly state that, in the opinion of the judges, a horse going off stride at the wire will be placed behind the horse interfered with after all other resulting placing. The section that deals with a loose horse states that any horse in the current program that falls, gets loose on the track, or is in an accident after starting to warm will be permitted to start that race only after examination and approval by the track veterinarian.
- (d) The benefits expected from administrative regulation are: Benefit of the off stride horse regulation is not to penalize the horse or horses that were interfered with during the race. Concerning the horse that is loose, has fallen, or is involved in an accident while warming up before a race: this is to protect the safety of the horse and the integrity of the sport of racing.
- (e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

February 10, 2000

- (1) **811 KAR 1:220**. Harness racing at county fairs.
- (2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 27, 2000, at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.
- (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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 27, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Phone: (606) 246-2040 Fax: (606) 246-2039.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing," or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260(3).
- (b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:220 in its entirety. It will revamp the county fair regulations governing harness racing at the Kentucky county fairs.
- (c) The necessity and function of the proposed administrative regulation is as follows: To bring the county fair regulations up to the standards of other states.
- (d) The benefits expected from administrative regulation are: It is determined that updating the program will attract more horses and a higher caliber of horses into the program.
- (e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

Department of Housing, Buildings and Construction

February 4, 2000

- (1) **815 KAR 20:191**, Minimum fixture requirements.
- (2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Tuesday, March 21, 2000, 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 5 persons or the administrative body or association agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to March 21, 2000, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-3833.
- (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 department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.
 - (b) The department intends to amend 815 KAR 20:191, Minimum fixture requirements, by amending Section 2 to require a toilet room with two or more fixtures that receive human waste have at least one floor drain and one accessible hose bibb.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the minimum number of plumbing fixtures to be provided in places of assembly and other public areas. This administrative regulation also includes the requirements of the Department for Natural Resources and Environmental Protection as well as the Department for Human Resources and the Department of Justice. The necessity of the proposed amendment is to clarify the vagueness of the existing wording in the regulation.
 - (d) The benefits expected from this administrative regulation are: An expected benefit from this amendment is better understanding and clarification of the wording of this section by design professionals.
 - (e) This administrative regulation will be implemented by plan review and inspection by the Division of Plumbing inspectors.

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

January 28, 2000

- (1) **902 KAR 20:066.** Operation and services; day health care programs.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 31, 2000, 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 General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.
 - (b) The cabinet intends to amend 902 KAR 20:066 to include requirements for the provision of nursing services in accordance with KRS Chapter 314. Other amendments will comply with drafting requirements of KRS Chapter 13A.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for day health care programs.
 - (d) The benefits expected from these proposed amendments are that they will permit the provision of nursing services by day health care programs.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

Department for Public Health

February 15, 2000

- (1) **902 KAR 100:036.** Repeal of 902 KAR 100:035.
- (2) Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the submitted matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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).

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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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 100:036, Repeal of 902 KAR 100:035 KRS 211.842 to 211.852.

(b) The new administrative regulation that the Department for Public Health intends to promulgate, concerns the repeal of requirements for the picking up and receiving and opening packages containing radioactive material and the test for special form licensed material. These requirements are found in 902 KAR 100:019. The Department for Public Health must amend 902 KAR 100:036 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The administrative regulation removes old requirements for the picking up, receiving and opening of package, which contain radioactive material.

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

February 15, 2000

(1) **902 KAR 100:040.** General provisions for specific licenses.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to general provisions for specific licenses is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:040. The U.S. Nuclear Regulatory Commission has amended their regulations. Kentucky is an Agreement State. The Department for Public Health must amend 902 KAR 100:040 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. These amendments will add requirements for the filing of an application for certain radioactive licenses and licensees terminating licenses. The amendment will delete from the administrative regulation requirements for decontamination and decommissioning and financial surety.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth requirements for general provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material within Kentucky. Except for persons exempted by 902 KAR 100:015 and 902 KAR 100:045, a person shall not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued in accordance with 902 KAR Chapter 100. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The administrative regulation provides the requirements by which the cabinet controls radioactive material within the Commonwealth. The administrative regulation provides requirements that ensure radioactive material is

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properly utilized and disposed of and does not represent a threat to public health.

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

February 15, 2000

(1) **902 KAR 100:041.** Quantities of radioactive material requiring consideration of the need for an emergency plan.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to quantities of radioactive material requiring consideration of the need for an emergency plan is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:041. The U.S. Nuclear Regulatory Commission has amended their regulations. Kentucky is an Agreement State. The Department for Public Health must amend 902 KAR 100:041 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The amendment will correct the quantities of a number of radionuclides requiring consideration of the need for emergency planning and also implement necessary agency and branch name changes.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth requirements for emergency plans for responding to a release of radioactive material or waste and shall apply to a person, applicant, or licensee required to submit an emergency plan. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The amended administrative regulation provides the requirements by which the cabinet can evaluate which person, applicant or licensee shall be required to submit emergency plans to ensure protection of health and safety while allowing the beneficial uses of radiation. The administrative regulation provides a consistent approach, which is applied on a state and national level for making decision in regards to emergency plans.

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

February 15, 2000

(1) **902 KAR 100:042.** Decommissioning and financial surety.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public

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Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to decommissioning and financial surety is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate is 902 KAR 100:042. The U.S. Nuclear Regulatory Commission has amended their regulations. Kentucky is an Agreement State. The Department for Public Health must promulgate 902 KAR 100:042 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. This administrative regulation promulgates facility release cleanup standards, requirements for decontamination and decommissioning plans, financial surety, and record keeping for radioactive material licensees.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth requirements for decommissioning and financial surety of radioactive material licensees. It applies to facilities licensed under 902 KAR 100:040 and 902 KAR 100:022 as well as other facilities subject to the cabinet's jurisdiction under KRS 211.842 through KRS 211.852. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The administrative regulation provides the requirements by which the cabinet can require licensees to decontaminate and decommission licensed facilities and ensures funds are set aside by the licensee for these activities. The administrative regulation provides requirements that ensure radioactive material do not represent a public health threat after license termination. The financial surety requirements ensure that licensee has sufficient funds for decommissioning licensed facilities.

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

February 15, 2000

(1) **902 KAR 100:045. Exemptions.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exemptions is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:045. The U.S. Nuclear Regulatory Commission has amended their regulations. Kentucky is an Agreement State. The Department for Public Health must amend 902 KAR 100:045 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. This amendment addresses the exemption of a radioactive drug for "in vivo" diagnostic use for humans, and it addresses necessary format change.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth exemptions for certain uses of radioactive material and specific devices containing radioactive material from the requirements of 902 KAR Chapter 100. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The amended administrative regulation provides requirements by which the cabinet can exempt certain types of radioactive material, which do present a risk to public health. The administrative regulation provides a state and national approach for addressing material, which may not impact health.

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

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(1) **902 KAR 100:058.** Specific licenses to manufacture, assemble, repair, or distribute products.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exemptions is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:058. The U.S. Nuclear Regulatory Commission has amended their regulations. Kentucky is an Agreement State. The Department for Public Health must amend 902 KAR 100:058 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. Amendment addresses requirements for registration of product information, maintenance of records of radioactive material transfer, resins containing radioactive material, records retention period, licensing the manufacture and distribution of ice detectors, manufacture and distribution of radiopharmaceuticals for medical use, and necessary format changes.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth requirements for the issuance of specific licenses to persons who manufacture, assemble, repair, or distribute commodities, products, or devices, which contain radioactive material. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The amended administrative regulation provides the requirements by which the cabinet can ensure that the introduction of radioactive material into products or uses does not result in unacceptable risk to public health. The administrative regulation provides a state and national approach for addressing products, devices, and materials, which contain radioactive material.

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

February 15, 2000

(1) **902 KAR 100:070** Transportation of radioactive material.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

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(a) The statutory authority for the promulgation of an administrative regulation relating to transportation of radioactive material is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:070. The Department for Public Health must amend 902 KAR 100:070 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. Amendments are being made which will delete general license requirements for transportation of fissile material which are no more than type A quantities of radioactive material and specified uranium and plutonium quantities. Amendment deleting record keeping requirements of shipment of radioactive material. Amendment for deleting requirements for record keeping and notification of deficiencies in packages during shipment. Amendment deleting requirements for quality assurance program related to the packaging utilized for shipment of radioactive material. Amendment of the requirements for notification of shipment of irradiated reactor fuel and nuclear waste. Amendment of the determination of A_1 and A_2 activity of radioactive material permitted in a type A package.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the requirements for the transportation of radioactive material. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The amended administrative regulation provides requirements by which the cabinet can ensure the transportation of radioactive materials occur without impact to public health. The administrative regulation provides a state and national approach for addressing transportation of radioactive material.

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

February 15, 2000

(1) **902 KAR 100:085. Exempt concentrations.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exempt concentrations is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:085. The U.S. Nuclear Regulatory Commission has amended their regulations. Kentucky is an Agreement State. The Department for Public Health must amend 902 KAR 100:085 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. This amendment addresses corrections in the level of certain radionuclide exempt concentrations and necessary format changes.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth a list of concentrations for specific radionuclides, which are exempted from the requirements of 902 KAR Chapter 100. A person is exempt to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing radioactive material in concentrations not in excess of those listed in this administrative regulation. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The amended administrative regulation provides the cabinet with a means to exempt levels of radionuclides, which the U.S. Nuclear Regulatory Commission has determined do not represent a threat to public health. This administrative regulation provides efficient and cost-effective requirements to minimize the regulatory burden on the cabinet and persons using these materials. The administrative regulation provides a state and national approach for ensuring beneficial products that have radioactive material can be utilized without undue regulatory burden.

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

February 15, 2000

(1) **902 KAR 100:165** Notice, reports and Instructions to employees.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Selina Riley, 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 submit matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to notices, reports and instructions to employees is KRS 211.842 to 211.852.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:165. The U.S. Nuclear Regulatory Commission has amended their regulations. Kentucky is an Agreement State. The Department for Public Health must amend 902 KAR 100:165 to meet the U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. The amendment addresses employee protection against discrimination. The amendment also addresses deliberate misconduct by a cabinet licensee, an applicant for a cabinet license, a registrant or a contractor or subcontractor of a cabinet licensee, registrant or applicant and a person, which may cause violation of rules, regulation, orders, condition, or limitation of a license issued by the cabinet.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(d) The benefits expected from administrative regulation are: The amended administrative regulation provides the cabinet with a means to ensure workers who may be exposed to radiation in the workplace have access to the necessary information needed to protect their health and safety. The administrative regulation provides a state and national approach for ensuring that beneficial uses of radiation without serious impacts on worker safety.

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

Department for Medicaid Services

January 18, 2000

(1) **907 KAR 1:025.** Payment for a cost-based nursing facility, a nursing facility with an all-inclusive rate unit, and a hospital with federally-defined swing beds.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000, 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 March 31, 2000, 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 Medi-

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caid 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 payment for a cost-based nursing facility, a nursing facility with an all-inclusive rate, and a hospital with federally-defined swing beds are KRS 194A.030, 194A.050, and 205.520.

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

1. Remove reimbursement methodology for price-based nursing facilities from 907 KAR 1:025;

2. Incorporate the \$534,600,000 budget cap for state fiscal year 2000;

3. Revise distinct part ventilator unit provisions to comply with a Franklin County Circuit Court Order;

4. Revise distinct part ventilator unit requirements, 20 bed nursing facility unit, and 15 bed census requirements for payment purposes;

5. Revise the Preadmission Screening and Resident Review (PASRR) Program requirements;

6. Clarify the specific Medicare principles of reimbursement utilized in this regulation to comply with a Franklin Circuit Court Order; and

7. Unincorporate the Cost-Based Nursing Facility Reimbursement Manual which is currently available for public view at the Medicaid Services manual website address which is <http://172.26.42.7/intranet/newprogmanuals.htm>. The specific website address for the Cost-Based Nursing Facility Reimbursement Manual is: <http://172.26.42.7/intranet/ProgMan/025e.pdf>

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the reimbursement methodology for providers of services in cost-based nursing facilities, nursing facilities with an all-inclusive rate unit, and hospitals with federally-defined swing beds.

(d) The benefits expected from this administrative regulation are: A more equitable reimbursement methodology for providers of services in cost-based nursing facilities, nursing facilities with an all-inclusive rate unit, and hospitals with federally-defined swing beds will better ensure that the health, welfare and safety needs of Medicaid recipients in these facilities will be met.

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

January 18, 2000

(1) **907 KAR 1:065**, Payments for price-based nursing facility services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 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 March 31, 2000, 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 payments for price-based nursing facility services is KRS 194A.030, 194A.050, 205.520, 1998 Ky Acts ch. 615.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate as 907 KAR 1:065 will provide for the implementation of a new reimbursement methodology for price-based nursing facility services.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation established the new methodology for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility.

(d) The benefits expected from administrative regulation are: Provides a more equitable reimbursement to providers of price-based nursing facility services thereby assuring the availability of these services to Kentucky's Medicaid population.

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

January 28, 2000

(1) **907 KAR 1:170**, Payments for home and community-based services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 28, 2000 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.

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(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 28, 2000, the public hearing will be canceled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 907 KAR 1:170 is KRS 194.050.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:170, Payments for Home and Community Based Services to convert the reimbursement methodology for Adult Day Health Care Services from a cost-based reimbursement system to a prospective payment system effective July 1, 2000.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes a new reimbursement methodology for Adult Day Health Care Services.

(d) The benefits expected from this administrative regulation are: It shall provide a more equitable reimbursement system for providers therefore, insuring the accessibility of services for Medicaid recipients, protecting the health, safety, and welfare of those recipients.

(e) The administrative regulation will be implemented as follows: by the Division of Long Term Care Services, Department for Medicaid Services, Cabinet for Health Services.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services

February 15, 2000

(1) **921 KAR 1:380**, Child Support Program application process.

(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 9 a.m., March 31, 2000, 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 days prior to, March 31, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Regulation Coordinator, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (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 child support application process is KRS 194B.050(1), 205.705, 205.795, 405.520, 42 USC 651 et seq., EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 921 KAR 1:380, Child Support Program application process, to add the Application for Direct Deposit (Form CS 168), revise the Non-K-TAP IV-D Services Fact Sheet (Form CS-37), clarify the language concerning medical support enforcement and assignment of rights, clarify cooperation in child support activities, clarify the language concerning services to nonpublic assistance clients, and make technical changes to language in general.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available. Amendment to this administrative regulation is necessary to incorporate the Application for Direct Deposit (Form CS 168), to revise the Non-K-TAP IV-D Services Fact Sheet (Form CS-37) which is incorporated by reference, to clarify language concerning medical support enforcement and assignment of rights, to clarify the language concerning services to nonpublic assistance clients, clarify what constitutes cooperation in child support activities and make technical corrections to language in general.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring the cabinet into compliance with federal mandates of the Personal Responsibility and Work Opportunity Reconciliation Act and thus prevent the loss of federal funds. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 651 et seq. in the Child Support State Plan.

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(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.

February 15, 2000

(1) **922 KAR 5:100.** Alternate care for adults.

(2) Cabinet for Families and Children, Department for Community Based Services, intends to promulgate a new administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 2000 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 31, 2000, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of a new administrative regulation relating to alternate care for adults is KRS 194B.050(1).

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a new administrative regulation that establishes:

1. Terms used by the department;

2. Procedure for placement and movement of adults within facilities;

3. Services to facilities and residents in skilled/nursing facilities and personal and family care homes;

4. Policy and procedure for conducting an assessment in a family and personal care home and placement of a committed child in a family or personal care home;

5. Procedure to assist a family care and personal care operator in requesting a bedfast care exception to the Division of Licensing and Regulation, Office of Inspector General, and establishes responsibility if the exception is granted; and

6. The department's role in closure of a long term care facility.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 194B.050(1) requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the Cabinet for Families and Children. This new administrative regulation sets forth standards for alternate care for adults aimed at protecting Kentucky's vulnerable adults residing in long-term care facilities.

(d) The benefits expected from this administrative regulation are to:

1. Assist the adult and his family in seeking placement in a long term care facility; and

2. Assess and provide services including prevention of abuse, neglect or exploitation.

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, FEBRUARY 15, 2000

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

STATEMENT OF EMERGENCY
301 KAR 2:221E

This emergency administrative regulation establishes seasons, limits and shooting hours for waterfowl. Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency administrative regulation. In addition, the President of the United States issued a Conservation Order, published December 20, 1999, which allowed the state to change some of the perimeters of the snow goose season. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for 301 KAR 2:221 was filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

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

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 CFR Parts 20, 21
 STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 CFR Parts 20, 21

EFFECTIVE: February 2, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to set waterfowl season dates and limits. This administrative regulation is necessary to set limits and dates within federal waterfowl hunting frameworks established by 50 CFR Part 20. This administrative regulation imposes a shorter season in the Ballard Reporting Area than permitted by federal frameworks in an effort to build Canada goose populations in that portion of the state.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Snow goose" means a snow goose or Ross' goose.

(3) "Waterfowl" is defined by KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 301 KAR 2:225, or 301 KAR 2:226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 3. Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser. (1) Season dates. Statewide, Thanksgiving Day, November 25, 1999, until January 23, 2000 [the first Saturday in November for two (2) consecutive days and the third Saturday in November for fifty-eight (58) consecutive days].

(2) The gun and archery daily limit shall be:

(a) Six (6) ducks, which shall not include more than:

1. Four (4) mallards, which shall not include more than two (2) hen mallards.

2. Two (2) wood ducks.

3. One (1) black duck.

4. Two (2) redheads.

5. One (1) pintail.

6. One (1) canvasback.

7. Three (3) scaup.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than one (1) hooded merganser.

(3) The possession limits shall be double the daily limit.

Section 4. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and brant season dates: Thanksgiving Day through January 31 [30], except that hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.

(2) Snow goose season dates:

(a) Regular season: Thanksgiving Day through January 31; except for the part of Fulton County in the Western Goose Zone, which shall have an ending date of February 15.

(b) Conservation snow goose season: February 1 through March 31 except in the part of Fulton County in the Western Goose Zone, where the conservation snow goose season shall be February 16 through March 31. [Thanksgiving Day through March 10.]

(3) Canada goose season dates shall be from the starting date listed below through January 31 [-December 12 through January 30], except:

(a) The last day of hunting shall be:

1. February 15 in the part of Fulton County which is in the Western Goose Zone [14 in Fulton County]; and

2. January 23 [24] in the Ballard Reporting Area.

(b) The season shall not open until:

1. December 4 in the Western Goose Zone;

2. December 11 in the Ballard Reporting Area;

3. December 13 in the Eastern Goose Zone;

4. December 28 [27] in the Pennyroyal-Coalfield Goose Zone;

5. December 28 [2-January-9] in the West-Central Kentucky Hunt [Goose] Zone;

6. January 23 [3-January-22] in the Northeast Kentucky Hunt [Goose] Zone.

(c) Hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.

(4) A person shall not goose hunt in:

(a) Breathitt, Knott, and Perry counties.

(b) The areas of Laurel River Lake as posted by sign. [The portions of Bell, Clay, Laurel, Pulaski and Whitley Counties owned by the U.S. Forest Service, including Laurel River Lake.]

(c) McCreary County east of US 27.

(d) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(e) Martin County.

(5) The gun and archery daily limit shall be:

(a) Six (6) dark geese, to include no more than:

1. Two (2) Canada geese;

2. Two (2) white-fronted geese; and

3. Two (2) brant.

(b) Twenty (20) snow geese, except there shall be no daily limit on snow geese during the conservation snow goose season.

(6) The possession limit shall be double the daily limit, except that there shall not be a possession limit on snow geese.

Section 5. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Kentucky [Special] Hunt Zone during a Canada goose season; or

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222.

(3) One-half (1/2) hour after sunset while hunting snow geese during the conservation snow goose season.

Section 6. Falconry Waterfowl Season and Limits. (1) Season dates:

(a) Snow geese [and Ross¹ geese]: November 25 through January 31 except in the part of Fulton County which is in the Western Goose Zone which shall have an ending date of February 15 [March 10];

(b) Conservation snow goose season: February 1 through March 31 except in the part of Fulton County which is in the Western Goose Zone, where the conservation snow goose season shall be from February 16 through March 31;

(c) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl, except that there shall be no limit on snow geese during the conservation snow goose season.

(3) Possession limit: six (6) waterfowl, except that there shall be no limit on snow geese during the conservation snow goose season.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 8,000 [5,800] Canada geese in the Ballard Reporting Area before January 23 [24], dark goose hunting shall cease in the Ballard Reporting Area.

(2) If hunters reach a quota of 3,200 [1,800] Canada geese in the Henderson-Union Reporting Area before January 31 [30], dark goose hunting shall cease in the Henderson-Union Reporting Area.

(3) In a county associated with the Ballard Reporting Area and [or] the Henderson-Union Reporting Area, dark goose hunting shall cease:

(a) Seven (7) days after the reporting area closes; or

(b) On the scheduled closing date, whichever occurs first.

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of an early closure.

Section 8. Permit for Conservation Snow Goose Season. (1) A person hunting snow geese during the conservation snow goose season shall first obtain a free permit from the department by contacting the Ballard WMA office at (270) 224-2244.

(2) A hunter during the conservation snow goose season shall submit a conservation snow goose season report by April 10. The report shall include the name and address of the hunter, the permit number, the number of days hunted and the total number of snow geese harvested.

DOUGLAS SCOTT PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
TOM BAKER, Chairman

APPROVED BY AGENCY: February 2, 2000

FILED WITH LRC: February 2, 2000 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fields

(1) Type and number of entities affected: Approximately 17,000 persons hunt waterfowl annually 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: No public comments received. This administrative regulation should have no impact on costs of living or employment.

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

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional re-

quirements.

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

3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(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: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(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: Inability to regulate waterfowl resource.

(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? (Explain why tiering was or was not used) Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

Agency Contact: Jennifer Fields

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21, including President's Conservation Order.

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

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 60 day season with a 6 bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit is 6 ducks and may not include more than 4 mallards (no more than 2 hen mallards), 3 scaup, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily

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bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 86 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and January 31.

The Canada goose season in the Western Goose Zone season may extend for 59 days (74 days in Fulton County) between October 1 and January 31 (except February 28 in Fulton County), or until the harvest of 22,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone: The Canada Goose season may extend for 35 days.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall include no more than 20 snow geese, 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit, except there is no possession limit on snow geese.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

Conservation Snow Goose Season - The President's Conservation Order allowed for a special season that would extend the dates of the snow goose season to March 31. As long as other waterfowl seasons are closed for that area, this season takes away any daily limit, allows the use of electronic calls, extends the hours to 1/2 hour beyond sunset and requires that all hunters give a harvest report.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for dark geese, or Canada geese, are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimize public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY 401 KAR 5:011E

KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations as are reasonably necessary to issue, continue in effect, remove, modify, suspend, or deny permits for the discharges into waters of the Commonwealth and permits for the installation, alteration, expansion, and operation of any sewage system. An ordinary administrative regulation is not sufficient and an emergency exists of an imminent threat to the public health and welfare because changes in the pork, poultry, beef and dairy industries have brought a renewed interest in concentrated animal feeding operations in Kentucky that have created an urgent need to review and update Kentucky's current environmental permitting program. An emergency administrative regulation (401 KAR 5:072E) is being filed regarding concentrated animal feeding operations. Therefore, an emergency administrative regulation to repeal an existing administrative regulation, 401 KAR 5:009, governing swine feeding operations must be placed into effect immediately. This emergency administrative regulation will repeal 401 KAR 5:009, Permits for swine feeding operations. This emergency administrative regulation will not be replaced by an

ordinary administrative regulation. Once it has served its purpose, it will no longer be needed because 401 KAR 5:009 will expire on adjournment of the 2000 General Assembly.

PAUL E. PATTON, Governor
JAMES E. BICKFORD, Secretary

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

401 KAR 5:011E. Repeal of 401 KAR 5:009.

RELATES TO: KRS 224.10-100, 224.70, 224.73

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

EFFECTIVE: February 14, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe permits to discharge into any waters of the Commonwealth. This administrative regulation repeals 401 KAR 5:009 because it conflicts with an emergency administrative regulation for concentrated animal feeding operations.

Section 1. Repeal. 401 KAR 5:009 is hereby repealed.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: February 9, 2000

FILED WITH LRC: February 14, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 28, 2000, at the Western Hills High School, 100 Doctors Drive, Frankfort, Kentucky. The public hearing will be held immediately following the Notice of Intent public hearing regarding concentrated animal feeding operations. Individuals who intend to be heard at this hearing shall notify this agency in writing, by March 21, 2000, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky, 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This administrative regulation applies to a new swine feeding operation. A swine feeding operation is an operation that confines 1,000 swine units or more and is not a concentrated animal feeding operation. There have been no applications for permits or permits issued under 401 KAR 5:009.

(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. Since this is an emergency regulation, there have been 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. Since this is an emergency regulation, there have been no public comments received.

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

1. First year following implementation: Since this is an emergency regulation, there have been no public comments received.

2. Second and subsequent years: Since this is an emergency regulation, there have been no public comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet can not estimate the costs or savings since there have been no permit applications or permits issued under 401 KAR 5:009.

2. Continuing costs or savings: The cabinet can not estimate costs since there were no permit applications or permits issued under 401 KAR 5:009.

3. Additional factors increasing or decreasing costs: The cabinet can not estimate costs since there were no permit applications or permits issued under 401 KAR 5:009.

(b) Reporting and paperwork requirements: The cabinet can not estimate costs since there were no permit applications or permits issued under 401 KAR 5:009. There could be potential savings by not issuing permits.

(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: Not applicable.

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

(a) Geographical area in which administrative regulation will be implemented: Since this is an emergency regulation, there have been no public comments received.

(b) Kentucky: Since this is an emergency regulation, there have been no public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives include allowing this administrative regulation to expire at the end of the 2000 legislative session or promulgation of a new and significantly different regulation. A conflicting emergency regulation, 401 KAR 5:072E, is being filed regarding concentrated animal feeding operations. Therefore, an emergency regulation to repeal 401 KAR 5:009 must be placed into effect immediately.

(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 detrimental effect on environment and public health would result if not implemented: No detrimental effect will occur.

(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 administrative regulation if in conflict: This administrative regulation is not in conflict with another.

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

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? No. Tiering is not necessary because this is a repeal of a regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter require-

ments, 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. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will not affect any unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to local government.

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

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There is no anticipated effect on current revenues.

Other Explanation: None

STATEMENT OF EMERGENCY 401 KAR 5:072E

KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations as are reasonably necessary to issue, continue in effect, remove, modify, suspend, or deny permits for the discharges into waters of the Commonwealth and permits for the installation, alteration, expansion, and operation of any sewage system. An ordinary administrative regulation is not sufficient and an emergency exists of an imminent threat to the public health and welfare because changes in the pork, poultry, beef and dairy industries have brought a renewed interest in confined animal feeding operations in Kentucky that have created an urgent need to review and update Kentucky's current environmental permitting program. Therefore, in order to protect human health and the environment, an emergency administrative regulation must be placed into effect immediately. This emergency administrative regulation will implement new permitting standards for the construction and operation of confined animal feeding operations, thus protecting the citizens of the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler with this emergency administrative regulation.

PAUL E. PATTON, Governor
JAMES E. BICKFORD, Secretary

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

401 KAR 5:072E. Concentrated animal feeding operations.

RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.20-100, 224.20-110, 224.20-120, 224.70-100, 224.70-110, 33 USC 1342

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.20-110, 224.70-110, 33 USC 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe permits to dis-

charge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act. KRS 224.20-110 authorizes the cabinet to regulate the emission or discharge of air contaminants into the air under the jurisdiction of the Commonwealth. This administrative regulation establishes certain conditions applicable to KPDES permits for concentrated animal feeding operations.

Section 1. Applicability. This administrative regulation applies to concentrated animal feeding operations.

Section 2. Owner and Operator Liability. (1) All persons who own or operate a concentrated animal feeding operation shall sign an application for and obtain a KPDES permit. This includes a person who enters into a contract with an owner or operator of a concentrated animal feeding operation if the person:

- (a) Owns the animals;
- (b) Directs the manner in which the animals will be housed or fed; or
- (c) Controls the inputs or other material aspects of the concentrated animal feeding operation.

(2) All owners and operators of a concentrated animal feeding operation shall be jointly and severally liable for complying with the KPDES permit.

Section 3. Siting Criteria. (1) A livestock barn, poultry house, lagoon, or land application area constructed or expanded after the effective date of this administrative regulation shall not be located in:

(a) A state or national park, state or national forest, or nature preserve; or

(b) A wellhead protection area approved by the cabinet pursuant to 401 KAR 4:220.

(2) A livestock barn, poultry house, or lagoon constructed or expanded after the effective date of this administrative regulation shall not be located in:

(a) A 100-year floodplain unless permitted pursuant to 401 KAR 4:060;

(b) A jurisdictional wetland as determined by the Natural Resources Conservation Service; or

(c) A sinkhole or other enclosed depression where subsidence is evident.

(3) The setback requirements established by this subsection apply as follows:

(a) A barn, lagoon, poultry house, litter storage structure, composting site, or waste handling structure constructed or expanded after the effective date of this administrative regulation at a concentrated animal feeding operation;

(b) A barn, lagoon, poultry house, litter storage structure, or composting site constructed or expanded after the effective date of this administrative regulation at an animal feeding operation, if the construction or expansion will cause the animal feeding operation to become a concentrated animal feeding operation; and

(c) Land application of waste at a concentrated animal feeding operation.

BEEF SITING CRITERIA

SETBACK FEATURE ₃	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	500 feet	1,000 feet
Incorporated city limit _{4,5}	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet

Water well not owned by applicant ₄	300 feet	150 feet	150 feet
Downstream, water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	750 feet	1,500 feet
Downstream, public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

DAIRY SITING CRITERIA

SETBACK FEATURE ₃	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	500 feet	1,000 feet
Incorporated city limit _{4,5}	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant ₄	300 feet	150 feet	150 feet
Downstream, water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	750 feet	1,500 feet
Downstream, public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

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POULTRY SITING CRITERIA

SETBACK FEATURE ₁	POULTRY HOUSES, LITTER STORAGE, OR COM- POSTING SITE	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	300 feet	300 feet
Incorporated city limit _{4,5}	2,000 feet	1,000 feet	1,500 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	75 feet
Water well not owned by applicant ₄	300 feet	200 feet	200 feet
Downstream, water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	500 feet	500 feet
Downstream, public water supply surface water intake	1 mile	500 feet	500 feet
Roadways, primary (state and federal)	150 feet	75 feet	75 feet
Roadways, secondary (county)	100 feet	75 feet	75 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

SWINE SITING CRITERIA

SETBACK FEATURE ₁	BARN, LAGOON	LAND APPLICATION AREA	
		Injection	Other Method
Dwelling not owned by applicant, church, school, schoolyard, business, other structure to which the general public has access, park ₄	1,500 feet	500 feet	1,000 feet
Incorporated city limit _{4,5}	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant ₄	300 feet	150 feet	150 feet
Downstream, water listed in 401 KAR 5:030 as exceptional water or outstanding national resource water; or outstanding state resource water ₂	1 mile	750 feet	1,500 feet

Downstream, public water supply surface water intake	5 miles	1 mile	1 mile
Roadways, primary (state and federal)	150 feet	75 feet	150 feet
Roadways, secondary (county)	150 feet	75 feet	150 feet

₁Measured along gradient

₂Designated outstanding state resource waters are listed in 401 KAR 5:026

₃Measured from the edge of the barn, lagoon, or land application area to the nearest edge of the setback feature

₄Existing at the time the first KPDES permit is issued

₅For existing operations, land application setbacks do not apply

(d) The cabinet may grant a variance from the setbacks in this section for a dwelling not owned by the applicant, or church if the applicant obtains from the owner of the property in question an easement, properly filed of record, granting the applicant a permanent exemption from the distance requirements in this administrative regulation. A certified copy of this easement shall be submitted to the cabinet with the permit application.

Section 4. Permanent Litter Storage. Poultry concentrated animal feeding operations shall provide permanent litter storage structures.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: February 9, 2000

FILED WITH LRC: February 14, 2000 at 11 a.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky, 40601, Phone (502) 564-3410, FAX (502) 564-0111.

REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This administrative regulation applies only to concentrated animal feeding operations as defined in 401 KAR 5:002.

(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. Since this is an emergency regulation, there have been 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. Since this is an emergency regulation, there have been no public comments received.

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

1. First year following implementation: Since this is an emergency regulation, there have been no public comments received.

2. Second and subsequent years: Since this is an emergency regulation, there have been no public comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be an increase in costs if there is a significant increase in the number of permit applications.

2. Continuing costs or savings: There will be an increase in costs if there is a significant increase in the number of permit applications.

3. Additional factors increasing or decreasing costs: There are no foreseen factors increasing or decreasing costs at this time.

(b) Reporting and paperwork requirements: There will be an increased burden on the administrative body if there is a consequent increase in permit applications.

(4) Assessment of anticipated effect on state and local reve-

nues: There is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds to support the implementation and enforcement of this administrative regulation will come from federal sources (Clean Water Act Section 106 funds).

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

(a) Geographical area in which administrative regulation will be implemented: Since this is an emergency regulation, there have been no public comments received.

(b) Kentucky: Since this is an emergency regulation, there have been no public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is in response to the U.S. Department of Agriculture, U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations, March 9, 1999. The federal strategy says that states should address integrator liability. Siting criteria are necessary for developing the comprehensive nutrient management plan. The U.S. Department of Agriculture, U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations, March 9, 1999, directs that odor and environmental matters be addressed by the states. This administrative regulation addresses these areas that are void in current state regulation. Other alternatives include doing nothing; voluntary measures; local planning and zoning, etc. Voluntary measures and local planning and zoning are still viable options for other governmental agencies.

(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 protect public health and the environment.

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

(c) If detrimental effect would result, explain detrimental effect: The 1998 305(b) "Report to Congress on Water Quality" has identified agriculture and concentrated animal feeding operation/AFOs as contributors to the impairment of streams in Kentucky. This administrative regulation, with its siting criteria, minimizes this potential impairment and loss of designated uses. The integrator liability provisions of this administrative regulation seek to ensure the proper mitigation or clean up of a spill or accident by ensuring that sufficient funds are available.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation may overlap with 401 KAR 5:009, which expires at the adjournment of the 2000 legislative session.

(a) Necessity of proposed administrative regulation if in conflict: This administrative regulation is in response to the U.S. Department of Agriculture, U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations. The U.S. Department of Agriculture, U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations directs that odor and environmental matters be addressed by the states. Unlike 401 KAR 5:009, the federal strategy also addresses animals other than swine. This administrative regulation, by addressing integrator liability, siting criteria, and broader categories of animals, seeks to be consistent with the federal strategy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No, however, 401 KAR 5:009 expires at the adjournment of the 2000 legislative session. The overlap is expected to be minimal.

(10) Any additional information or comments: No

(11) TIERING: Is tiering applied? Yes. Due to the definitions of concentrated animal feeding operations, smaller producers who are thought to have less of an impact on public health and the environment are not affected by this emergency regulation, unless they expand their operation to the size of a concentrated animal feeding operation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 USC 1342.

2. State compliance standards. KRS 224.10-100, 224.16-050, 224.20-110, 224.70-110.

3. Minimum or uniform standards contained in the federal mandate. The Unified National Strategy presents USDA and EPA's plan for addressing the water quality and public health impacts associated with animal feeding operations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, based on the U.S. Department of Agriculture, U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations, March 9, 1999.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will not affect any unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to local government.

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

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There is no anticipated effect on current revenues.

Other Explanation: None

STATEMENT OF EMERGENCY 780 KAR 3:065E

This emergency administrative regulation establishes the procedures and guidelines for certified and equivalent service employees in the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor
ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 3:065E. Certified and equivalent service administrative regulations.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgates comprehensive administrative regulations for the certified and equivalent staff governing programs to improve the

work effectiveness of employees and to provide for the safety, health and welfare of KRS Chapter 151B employees. This administrative regulation is necessary to comply with this statutory requirement.

Section 1. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:

(a) The attempted, threatened or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that resembles a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking as defined by KRS 508.130;

(e) Striking, slapping or otherwise physically attacking another person; and

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or a member of the general public, or threatens or intimidates a state employee or a member of the general public.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 2. Kentucky Employee Assistance Program (KEAP). (1) Establishment of Kentucky Employee Assistance Program. Pursuant to 101 KAR 2:160 the Personnel Cabinet has established and administers through the Division of Employee Benefits the Kentucky Employee Assistance Program (KEAP) to coordinate employee assistance programs that exist in state agencies and to supplement them with additional services.

(2) Eligibility for services.

(a) An employee whose job performance is or may be adversely affected by personal problems may initiate a request for confidential personal or family services from the Kentucky Employee Assistance Program.

(b) An employee shall obtain a Kentucky Employee Assistance Program service without discrimination or reprisal.

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

(3) Referrals.

(a) A supervisor may extend to an employee an offer of assistance through the Kentucky Employee Assistance Program if the employee's job behavior or job performance is unacceptable or deteriorating.

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

(c) An employee shall be allowed to contact KEAP for assessment or referral on state time with the prior approval of the supervisor.

(d) A supervisor may direct the employee to provide written confirmation of participation from KEAP, which shall provide confirmation upon the employee's written consent.

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

(f) Employee involvement in the Kentucky Employee Assistance Program shall remain confidential as permitted by state and federal law, unless the employee authorizes release of specific information to a specifically identified person.

(g) Kentucky Employee Assistance Program services shall be free of charge to an employee and his family for information, as-

essment or referral. The Commonwealth shall not be liable for a counseling or treatment cost incurred except as provided through health benefits.

Section 3. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state designated holiday, a paycheck shall be issued on the workday preceding the holiday.

Section 4. Workers' Compensation Fund and Program. (1) Workers' compensation fund. The self-insured workers' compensation fund and program established by KRS 18A.375(1) shall cover all eligible employees.

(2) Eligibles.

(a) A state employee, as defined by KRS 18A.370, shall be eligible to participate in the program.

(b) Other state-related groups shall be included upon written agreement with the Personnel Cabinet.

(3) Assessments. The assessment for an individual agency shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(a) A biennial actuarial study shall be carried out to insure the fund's fiscal soundness.

(b) A fund deficit shall be recouped through an interim billing or additional assessment if deemed necessary by an actuarial study.

(4) Benefits.

(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if the employee is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in this subsection, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(d) For an absence due to illness or injury for which workers' compensation benefits are received, if the employee elects to accept the workers' compensation benefits, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. An employee shall not receive paid sick leave and workers' compensation pay for the same period of time.

(5) Notification procedures.

(a) Employee requirements. An employee shall inform the supervisor of an injury as soon as physically able to do so.

(b) Supervisor requirements.

1. The supervisor shall:

a. Complete the employer's first report of injury, IA-1, giving specific information about the injury; and

b. Submit the form to the designated office in the agency within three (3) working days after the supervisor is notified of an injury to insure timely payments to the injured employee.

2. A Lost Time and Return to Work Form, WCF-1, shall be submitted by the employee or the employee's representative to the supervisor if an employee is losing time from work due to a work-related injury. The supervisor shall notify his personnel unit when an employee returns so that the WCF-1 form shall be submitted to the Personnel Cabinet.

3. Each medical bill, or medical information regarding treatment of a job-related injury or illness of the employee, shall be submitted in the same manner as an injury report. An injury report shall be forwarded as soon as possible.

4. A safety representative in each agency shall be notified of each accident so that the representative may review accident causes and provide safety training. A supervisor shall promote safety with employees.

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(6) Recordkeeping. All records maintained by the Personnel Cabinet and by an agency with respect to an employee claim under this administrative regulation shall be confidentially maintained.

(7) Incorporation by reference.

(a) The following material is incorporated by reference:

1. First Report of Injury Form 14-1, February 1995; and

2. Lost Time and Return to Work Form WCF-1, 1995.

(b) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, 500 Mero Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: January 21, 2000

FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 3:065E will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: No alternative methods exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 780 KAR 3:071E

This emergency administrative regulation repeals 780 KAR 3:070, Attendance, compensatory time, and leave for certified and equivalent employees. 780 KAR 3:070 will be replaced by a new administrative regulation consistent with that being simultaneously promulgated for the certified and equivalent employees. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor

ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 3:071E. Repeal of 780 KAR 3:070.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgates comprehensive administrative regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, (PL 103-3) as implemented by 29 CFR Part 825, requires the granting of family and medical leave. 780 KAR 3:070, which governs leave for certified and equivalent staff, is being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 780 KAR 3:070 shall be replaced by 780 KAR 3:072.

Section 1. 780 KAR 3:070, Attendance, compensatory time, and leave, is hereby repealed.

ALLEN D. ROSE, Secretary
SHERRY R. DEATRICK, General Counsel
APPROVED BY AGENCY: January 21, 2000
FILED WITH LRC: January 21, 2000 at 3 p.m.

FISCAL NOTE ON LOCAL GOVERNMENT

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrlick, General Counsel

(1) Type and number of entities affected: The proposed repeal of 780 KAR 3070 will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: No alternative methods exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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
780 KAR 3:072E

This emergency administrative regulation replaces 780 KAR 3:070 and establishes the procedures and guidelines for attendance, compensatory time, and leave for certified and equivalent service employees in the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor
ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 3:072E. Attendance, compensatory time, and leave for certified and equivalent service.

RELATES TO: KRS 151B.035, Chapter 337, 29 CFR Part 825, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgates comprehensive administrative regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC 2601 et seq., as implemented by 29 CFR Part 825, requires the granting of family and medical leave. This administrative regulation is necessary to comply with these statutory requirements.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The normal work day for school-based employees shall coincide with the appropriate school schedule as recommended by the principal and approved by the commissioner.

(3) The appointing authority may require employees to work hours and work days other than normal including, but not limited to, inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work within schools or divisions which require more than one (1) shift or seven (7) days a week operation may be assigned from one (1) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to

maintain or provide essential services of the agency, or to meet scheduling needs of students. Employees shall be given as much advance notice as possible when schedules are changed. The employee is required to give reasonable notice in advance of absence from a work station.

(5) Employees shall be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. 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/or 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 "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of the regular work schedule.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

(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 200 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 a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation, and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) 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 200 compensatory hours.

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

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

(d) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

1. Spring break.
2. Christmas break except on the four (4) official holidays normally given to state employees.

(e) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

Section 3. 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 day per month
60-119 months	1 1/4 days per month
120-179 months	1 1/2 days per month
180-239 months	1 3/4 days per month

240 months & over	2 days per month
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(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) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall only accrue leave during the actual school term, unless he is approved to work and actually works extended employment.

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

(e) 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.

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

(g) A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for prior annual months of service.

(h) An employee dismissed for cause who has been reinstated to state service shall receive credit for annual months of service prior to dismissal, except where the dismissal resulted from the violation of KRS 151B.090.

(i) Part-time, temporary, and seasonal employees 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, 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) School based-employees shall take time off during the following times:

1. Spring break.
2. Christmas break except on the four (4) official holidays normally given to state employees.

(e) In cases of special or emergency circumstances, the supervisor may request an employee to work during the above times without loss of annual leave.

(f) Absence due to sickness, injury, or disability in excess of the amount available for those purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(g) 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.

(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	30 workdays
60-119 months	37 workdays
120-179 months	45 workdays
180-239 months	52 workdays
240 months and over	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)(e) of this section.

(3) Annual leave on separation.

(a) An employee who is separated by proper resignation or retirement, shall be paid in a lump sum for accumulated annual leave not to 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) An employee who is laid off shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday, shall retain accumulated annual 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, the 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 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. The employee resigns, or is laid off because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

(g) Eligibility for state-paid health and life insurance benefits.

1. A twelve (12) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

2. A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family medical leave, other than educational leave, during any part of the previous month, except between the dates of June 16 and July 31.

3. A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall be entitled to state-paid health and life insurance benefits between June 16 and July 31.

4. If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 4. 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 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) An employee, who retired from a position covered by a state-

administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(i) A former employee who is appointed, reinstated, or re-employed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(j) An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, except where the dismissal resulted from a violation of KRS 151B.090.

(k) 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 the 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 the work station because of a contagious disease or demonstration of behavior that might endanger the employee 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) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

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

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

(3) Eligibility for state-paid health and life insurance benefits.

(a) A twelve (12) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(b) A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month, except between the dates of June 16 and July 31.

(c) A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall be entitled to state-paid health and life insurance benefits between June 16 and July 31.

(d) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

(4) 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, compensatory and sick 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 a periodic doctor's statement during the year attesting to the employee's continued inability to perform 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.

(5) 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.

(6) 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 the designee. 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 5. 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 and medical 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 6. 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 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 the proceeding that is part of his assigned duties.

Section 7. 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 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 8. 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 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 or on the day the employee voted by absentee ballot.

Section 9. 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 relate 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) The appointing authority may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct.

(a) 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.

(b) If the investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Department for Technical Education and the Department for Adult Education and Literacy files.

(c) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(4) Eligibility for state-paid health and life insurance benefits.

(a) A twelve (12) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or Family and Medical Leave, other than educational leave, during any part of the previous month.

(b) A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or Family and Medical Leave, other than educational leave, during any part of the previous month, except between the dates of June 16 and July 31.

(c) A ten and one-half (10 1/2) month employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall be entitled to state-paid health and life insurance benefits between June 16 and July 31.

(d) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 10. 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 11. Absences Due to Adverse Weather. (1) 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 shut down 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 2 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12. 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 require 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.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: January 21, 2000

FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and Number of Entities Affected: The proposed 780 KAR 3:072E will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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: No direct costs are anticipated. The addition of ten sick days at 20 years of service and increase in the annual leave

awarded based on seniority will have an indirect fiscal impact. Some indirect savings may be realized from requiring an employee with 100 hours of compensatory leave to use that time before using annual leave because payment for excess compensatory leave would be reduced.

2. Continuing costs or savings: Same as in (3)(a)1.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments permit the appointing authority to require an employee with 100 hours of compensatory leave to use that time before using annual leave. They also provide for additional sick and annual leave based on longevity.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 780 KAR 3:075E

This emergency administrative regulation establishes sick leave sharing procedures for certified and equivalent service employees in the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor
ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 3:075E. Sick leave sharing procedures for certified and equivalent service.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the certified and equivalent staff governing sick leave. This administrative regulation is necessary to comply with this statutory requirement.

Section 1. Definitions. (1) "Employee" is defined by KRS 151B.010(10).

(2) "Immediate family" means:

(a) The employee's spouse, mother, father, grandparent, son or daughter; or

(b) A person of similarly close relationship:

1. Who has resided with the employee for at least thirty (30) days prior to application; or

2. For whom the employee is legally responsible.

(3) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which has rendered or will render the employee completely incapable of performing the essential duties of his job due to:

(a) The employee's personal illness; or

(b) The medically certified necessity that the employee care for an eligible family member.

Section 2. Eligibility to Donate or Receive Sick Leave. (1) An employee shall not qualify to donate or receive sick leave under the sick leave sharing program if the employee:

(a) Is not full time;

(b) Is not in active payroll status; or

(c) Has:

1. Resigned;

2. Retired; or

3. Been placed in unpaid leave status by a personnel action.

(2) To request donated sick leave, an employee shall complete an Application for Sick Leave Sharing.

(3) To donate sick leave, an employee shall complete a Sick Leave Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility shall be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(4) If multiple donors donate sick leave to an eligible recipient,

agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) The applicant for sick leave sharing shall be responsible for filing:

(a) The appropriate medical certificates certifying the medical necessity; and

(b) The Application for Sick Leave Sharing.

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(8) Except as provided by subsection (9) of this section, donated sick leave shall be used:

(a) In the order in which it is donated; and

(b) On consecutive days.

(9) Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

(12) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) An employee receiving workers' compensation benefits shall be eligible to receive shared sick leave to maintain a regular level of pay.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Sick Leave Sharing, September 1999; and

(b) Sick Leave Donation, September 1999.

(2) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, 500 Mero Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: January 21, 2000

FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and Number of Entities Affected: The proposed 780 KAR 3:075E will affect approximately 490 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: 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 on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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

780 KAR 3:100E

This emergency administrative regulation amends procedures for employee actions within the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The No-

tice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor
ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 3:100E. Employee actions.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the certified and equivalent staff governing promotion, demotion, transfer, and reemployment.

Section 1. Definition: Work Station. (1) The official work station of an employee assigned to an office is the street address where the office is located.

(2) The official work station of a field employee is that address to which the employee is assigned at the time of appointment to the employee's position.

(3) Each employee shall be assigned to a work station by the appointing authority. A work station may be changed to better meet the needs of the agency. An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days, provided that such employee is reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority notifies the employee in writing prior to the effective date of the action. Nothing within this administrative regulation shall be construed as prohibiting the appointing authority from assigning an employee to work in a different site within the county of employment. Reassignment within a county is not an appealable action.

Section 2. Promotion. Any employee in the certified and equivalent personnel system may be promoted to a position of greater scope of discretion and responsibility or to the unclassified system in the Department for Technical Education or Department for Adult Education and Literacy. [~~Adult and Technical Education~~]

Section 3. Demotion. An appointing authority may demote an employee who makes a written request for voluntary demotion. The written request shall be on a form prescribed by the Commissioner of the Department for [Adult and] Technical Education or the Department for Adult Education and Literacy and shall include a statement of the reason for the request, the effective date of the demotion, identifying information concerning the position demoted from and to, and a waiver of the right of appeal concerning the demotion. A copy of the request shall be placed in the employee's official file.

Section 4. Transfer. (1) Any employee in the certified and equivalent personnel system may be transferred from one (1) office to another and from one (1) ~~district~~ [region] to another.

(2) Transfers may be on a voluntary or involuntary basis. Unless an employee requests a transfer in writing, such transfer shall be deemed to have been made on an involuntary basis. The appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(3) If the transfer is on an involuntary basis, the employee shall receive written notice of his transfer. Following notification of an involuntary transfer, an employee shall report for work at the work station to which transferred on the effective date of the transfer. The notice shall be in writing, shall state the effective date of the transfer, the reason for the employee's selection for transfer, and the employee's obligation to report to the new work station. The notice shall also advise the employee that he has the right to appeal the transfer to the State Board for Adult and Technical Education within thirty (30) days

of receipt of the notice excluding the day that he received notification. When the employee is notified, copies of the notice shall be forwarded to the Commissioner of the Department for [Adult and] Technical Education or the Department for Adult Education and Literacy.

(4) If an involuntary transfer is to a position with a work station in a different county, the employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer. The appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) days following the effective date of transfer in accordance with administrative regulations relating to reimbursement of travel expenses, and shall pay the employee's reasonable moving expenses, if any, in accordance with the Finance and Administration Cabinet's Policy Procedures relating to Moving Expenses and Reimbursement. The notice specified in subsection (3) of this section shall advise the employee of these provisions.

(5) If an employee with status requests in writing that he be transferred, the appointing authority may make a voluntary transfer. The written request shall be on a form prescribed by the Commissioner of the Department for [Adult and] Technical Education or the Department for Adult Education and Literacy and shall include a statement of the reason for the request, the effective date of the transfer, identifying information concerning the position transferred from and to, and a waiver of the right to appeal concerning the transfer. A copy of this request shall be forwarded to the Commissioner of the Department for [Adult and] Technical Education or the Department for Adult Education and Literacy.

Section 5. Reemployment. Reemployment in the certified and equivalent personnel system may occur in accordance with KRS 151B.080 [~~Chapter 151B, Section 14~~]. Former employees on a reemployment list shall meet all qualifications in order to be considered for a position.

Section 6. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least thirty (30) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give thirty (30) calendar days notice with his resignation may result in forfeiture of accrued annual leave. Part-time hourly employees who have not worked for six (6) months [~~two (2) consecutive years~~] shall be deemed to have resigned.

Section 7. Temporary Overlap. The appointing authority for training purposes may place an employee in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

Section 8. Retirement. If an employee voluntarily retires, he is considered as separated without prejudice.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: January 21, 2000

FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 3:075E will affect approximately 800 employees in the Department of Technical Education and 26 employees in the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: 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 on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the certified and classified service under KRS Chapter 151B, it does not apply to the unclassified service.

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 780 KAR 6:005E

This emergency administrative regulation establishes the procedures and guidelines for certified and equivalent service employees in the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor
ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 6:005E. Unclassified service administrative regulations.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgates comprehensive administrative regulations for the unclassified staff governing programs to improve the work effectiveness of employees and to provide for the safety, health and welfare of KRS Chapter 151B employees. This administrative regulation is necessary to comply with this statutory requirement.

Section 1. Workplace Violence Policy. (1) Workplace violence shall be prohibited and include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that resembles a weapon in a manner which would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking as defined by KRS 508.130;

(e) Striking, slapping or otherwise physically attacking another person; and

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of a state employee or a member of the general public, or threatens or intimidates a state employee or a member of the general public.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 2. Kentucky Employee Assistance Program (KEAP). (1) Establishment of Kentucky Employee Assistance Program. Pursuant to 101 KAR 2:160 the Personnel Cabinet has established and administers through the Division of Employee Benefits the Kentucky Employee Assistance Program (KEAP) to coordinate employee assistance programs that exist in state agencies and to supplement them with additional services.

(2) Eligibility for services.

(a) An employee whose job performance is or may be adversely affected by personal problems may initiate a request for confidential personal or family services from the Kentucky Employee Assistance

Program.

(b) An employee shall obtain a Kentucky Employee Assistance Program service without discrimination or reprisal.

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

(3) Referrals.

(a) A supervisor may extend to an employee an offer of assistance through the Kentucky Employee Assistance Program if the employee's job behavior or job performance is unacceptable or deteriorating.

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

(c) An employee shall be allowed to contact KEAP for assessment or referral on state time with the prior approval of the supervisor.

(d) A supervisor may direct the employee to provide written confirmation of participation from KEAP, which shall provide confirmation upon the employee's written consent.

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

(f) Employee involvement in the Kentucky Employee Assistance Program shall remain confidential as permitted by state and federal law, unless the employee authorizes release of specific information to a specifically identified person.

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

Section 3. Issuance of Paychecks to State Employees. (1) A paycheck shall be issued to a state employee on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, a paycheck shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state designated holiday, a paycheck shall be issued on the workday preceding the holiday.

Section 4. Workers' Compensation Fund and Program. (1) Workers' compensation fund. The self-insured workers' compensation fund and program established by KRS 18A.375(1) shall cover all eligible employees.

(2) Eligibles.

(a) A state employee, as defined by KRS 18A.370, shall be eligible to participate in the program.

(b) Other state-related groups shall be included upon written agreement with the Personnel Cabinet.

(3) Assessments. The assessment for an individual agency shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(a) A biennial actuarial study shall be carried out to insure the fund's fiscal soundness.

(b) A fund deficit shall be recouped through an interim billing or additional assessment if deemed necessary by an actuarial study.

(4) Benefits.

(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if he is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in this subsection, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(d) For an absence due to illness or injury for which workers' compensation benefits are received, if the employee elects to accept

the workers' compensation benefits, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. An employee shall not receive paid sick leave and workers' compensation pay for the same period of time.

(5) Notification procedures.

(a) Employee requirements. An employee shall inform the supervisor of an injury as soon as physically able to do so.

(b) Supervisor requirements.

1. The supervisor shall:

a. Complete the employer's first report of injury, IA-1, giving specific information about the injury; and

b. Submit the form to the designated office in the agency within three (3) working days after the supervisor is notified of an injury to insure timely payments to the injured employee.

2. A Lost Time and Return to Work Form, WCF-1, shall be submitted by the employee or the employee's representative to the supervisor if an employee is losing time from work due to a work-related injury. The supervisor shall notify his personnel unit when an employee returns so that the WCF-1 form shall be submitted to the Personnel Cabinet.

3. Each medical bill, or medical information regarding treatment of a job-related injury or illness of the employee, shall be submitted in the same manner as an injury report. An injury report shall be forwarded as soon as possible.

4. A safety representative in each agency shall be notified of each accident so that the representative may review accident causes and provide safety training. A supervisor shall promote safety with employees.

(6) Recordkeeping. All records maintained by the Personnel Cabinet and by an agency with respect to an employee claim under this administrative regulation shall be confidentially maintained.

(7) Incorporation by reference.

(a) The following material is incorporated by reference:

1. First Report of Injury Form 14-1, February 1995; and

2. Lost Time and Return to Work Form WCF-1, 1995.

(b) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, 500 Mero Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: January 21, 2000

FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 6:005E will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: No alternative methods are available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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 780 KAR 6:061E

This emergency administrative regulation establishes the procedures and guidelines for unclassified employees in the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor

ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 6:061E. Repeal of 780 KAR 6:060.

RELATES TO: KRS 151B.035, 151B.040, 151B.085, 29 USC 2601 to 2654, Part 825

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3) requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC 2601 to 2654, as implemented by 29 CFR Part 825, requires the granting of family and medical leave. 780 KAR 6:060, which governs leave for unclassified service staff, is being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 780 KAR 6:060 shall be replaced by 780 KAR 6:062.

Section 1. 780 KAR 6:060, Attendance, compensatory time, and attendance, is hereby repealed.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: January 21, 2000

FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 6:061E will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: No alternative methods exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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

780 KAR 6:062E

This emergency administrative regulation establishes the procedures and guidelines for unclassified employees in the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor

ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 6:062E. Attendance, compensatory time and leave for unclassified service.

RELATES TO: KRS 151B.035, 151B.040, 151B.085, 29 CFR Part 825, 29 USC 201, et seq., 2601 to 2654

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3) requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting,

and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC 2601 to 2654, as implemented by 29 CFR Part 825, requires the granting of family and medical leave. This administrative regulation establishes the attendance, compensatory time and leave requirements for unclassified service staff.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week unless otherwise specified by the appointing authority.

(2) The appointing authority may require employees to work hours and work days other than normal if it is in the best interest of the agency. An employee shall be given as much advance notice as possible if a schedule is changed. The employee shall be required to give reasonable notice in advance of absence from a work station.

(3) Employees shall be allowed up to two (2) professional days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

Section 2. 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/or 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 "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours actually worked in excess of his regular work schedule.

(d) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be paid for all hours worked in excess of forty (40) hours per week.

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

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 200 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 unclassified employee may use accumulated compensatory time if:

1. Practicable;
2. Requested in advance; and
3. Approved by the respective supervisor.

(b) An appointing authority may require an employee who has a balance of at least 100 hours compensatory leave to use compensatory leave before annual leave, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation, and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(c) 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 200 compensatory hours.

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

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

Section 3. Annual Leave. (1) Accrual of annual leave.

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

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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 leave 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, and who was dismissed for cause from state service shall receive credit for service prior to the dismissal, except if the dismissal resulted from a violation of KRS 151B.090.

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

(g) Part-time, temporary and seasonal employees shall not be entitled to accrue 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 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 may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(e) 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.

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

Months of Service	Maximum Amount
0-59 months	30 workdays
60-119 months	37 workdays
120-179 months	45 workdays
180-239 months	52 workdays
240 months & over	60 workdays

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

(h) 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) An employee who is separated by proper resignation or retirement shall be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts established by subsection (2)(f) 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) An employee who is laid off shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who resigns or terminates one (1) workday and returns to certified and equivalent service the next workday, shall retain accumulated annual 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, the 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 the accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. The employee resigns, or is laid off because of an approved plan of privatization of the services performed; and

2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

(g) Eligibility for state-paid health and life insurance benefits.

1. An employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

2. If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 4. 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 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 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) An employee, who retired from a position covered by a state-administered retirement system, who is receiving retirement benefits and who returns to state service, shall not receive credit for sick months of service prior to retirement.

(i) A former employee who is appointed or reemployed, other than a former employee receiving benefits under a state-administered retirement system, shall receive credit for the unused sick leave balance credited upon the separation and shall receive credit for prior sick months of service.

(j) An employee dismissed for cause who has been rehired to state service shall receive credit for sick months of service prior to the dismissal, except where the dismissal resulted from a violation of KRS 151B.090.

(k) 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 the 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 the employee or others at the work station because of a contagious disease or behavior that might endanger the employee 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 paragraph shall be limited to three (3) days; or

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

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

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

(d) 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.

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

(3) Eligibility for state-paid health and life insurance benefits.

(a) An employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(b) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

(4) 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, compensatory and sick leave, unless the employee 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 a periodic doctor's statement 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 is 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 resigned under paragraph (g) of this subsection shall retain reinstatement privileges.

(5) 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.

(6) 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 the designee. 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 5. 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 regulation implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family and medical 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 6. 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 7. 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 the civil duties, to serve under order on training duty without loss of 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) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8. Voting and Election Leave. (1) An employee who is eligible and who is 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 or on the day the employee voted by absentee ballot.

Section 9. 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 relate 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) The appointing authority may place an employee on special leave with pay for investigative purposes for a period of time not to exceed sixty (60) working days pending an investigation of an allegation of employee misconduct.

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

(b) If this investigation reveals no misconduct on behalf of the employee, all records relating to the investigation shall be purged from the Department for Adult Education and Literacy and the Department for Technical Education files.

(c) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(4) Eligibility for state-paid health and life insurance benefits.

(a) An employee who is eligible for state-paid health and life insurance benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or family and medical leave, other than educational leave, during any part of the previous month.

(b) If an employee is unable to work and uses paid leave to qualify for the state-paid health and life insurance benefits, the employee shall use paid leave days consecutively.

Section 10. 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 his employment.

Section 11. Absences Due to Adverse Weather. (1) 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 have 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 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 2 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 12. 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 requires 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

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

ALLEN D. ROSE, Secretary
SHERRY R. DEATRICK, General Counsel
APPROVED BY AGENCY: January 21, 2000
FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 6:062E will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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: The addition of 10 sick days at 20 years of service and increase in the annual leave awarded based on seniority will have an indirect fiscal impact. Some indirect savings may be realized from requiring an employee with 100 hours of compensatory leave to use that time before using annual leave because payment for excess compensatory leave would be reduced.

2. Continuing costs or savings: Same as in (3)(a)1.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments permit the appointing authority to require an employee with 100 hours of compensatory leave to use that time before using annual leave. They also provide for additional sick and annual leave based on longevity.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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
780 KAR 6:065E**

This emergency administrative regulation establishes the procedures and guidelines for unclassified employees in the Department for Adult Education and Literacy and the Department for Technical Education. Due to recent changes to the administrative regulations promulgated by the Personnel Cabinet, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 21, 2000.

PAUL E. PATTON, Governor
ALLEN D. ROSE, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

780 KAR 6:065E. Sick leave sharing procedures for unclassified service.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

EFFECTIVE: January 21, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specifies that the State Board promulgate comprehensive administrative regulations for the unclassified service staff governing sick leave. This administrative regulation is necessary to comply with this statutory requirement.

Section 1. Definitions. (1) "Employee" is defined by KRS 151B.010(10).

(2) "Immediate family" means:

(a) The employee's spouse, mother, father, grandparent, son or daughter; or

(b) A person of similarly close relationship:

1. Who has resided with the employee for at least thirty (30) days prior to application; or

2. For whom the employee is legally responsible.

(3) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which has

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rendered or will render the employee completely incapable of performing the essential duties of his job due to:

- (a) The employee's personal illness; or
- (b) The medically certified necessity that the employee care for an eligible family member.

Section 2. Eligibility to Donate or Receive Sick Leave. (1) An employee shall not qualify to donate or receive sick leave under the sick leave sharing program if the employee:

- (a) Is not full-time;
- (b) Is not in active payroll status; or
- (c) Has:
 1. Resigned;
 2. Retired; or
 3. Been placed in unpaid leave status by a personnel action.
- (2) To request donated sick leave, an employee shall complete an Application for Sick Leave Sharing.
- (3) To donate sick leave, an employee shall complete a Sick Leave Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility shall be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(4) If multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) The applicant for sick leave sharing shall be responsible for filing:

(a) The appropriate medical certificates certifying the medical necessity; and

(b) The Application for Sick Leave Sharing.

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(8) Except as provided by subsection (9) of this section, donated sick leave shall be used:

- (a) In the order in which it is donated; and
- (b) On consecutive days.

(9) Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

(12) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) An employee receiving workers' compensation benefits shall be eligible to receive shared sick leave to maintain a regular level of pay.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Application for Sick Leave Sharing, September 1999; and
- (b) Sick Leave Donation, September 1999.

(2) This material may be inspected, copied, or obtained at the Office of Personnel Services, Cabinet for Workforce Development, Capital Plaza Tower, Second Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALLEN D. ROSE, Secretary

SHERRY R. DEATRICK, General Counsel

APPROVED BY AGENCY: January 21, 2000

FILED WITH LRC: January 21, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Type and number of entities affected: The proposed 780 KAR 6:065E will affect approximately 20 employees in the Department for Technical Education and the Department for Adult Education and Literacy within the Cabinet for Workforce Development.

(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 impact.

(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 impact. None anticipated.

(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 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

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

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

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

(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: 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 on Kentucky: No impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The regulation does not affect environment or public health. It relates to employees within the Department for Adult Education and Literacy, and the Department for Technical Education.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies in conflict, to our knowledge.

(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 emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent is filed simultaneously with this emergency regulation.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service under KRS Chapter 151B, it does not apply to the certified and classified service.

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 907 KAR 1:025E

This emergency administrative regulation establishes a more equitable reimbursement methodology for providers of services in cost-based nursing facilities, nursing facilities with an all-inclusive rate unit, and hospitals with federally-defined swing beds. This action must be taken on an emergency basis to ensure the health, safety, and welfare of Medicaid recipients in these facilities. Failing to implement this reimbursement methodology may pose an imminent threat to the health, safety, and welfare of Medicaid recipients in these facilities by decreasing the availability of services to them. This emergency administrative regulation differs from the emergency administrative regulation filed on the same subject on July 21, 1999 as follows: this emergency administrative regulation removes the price-based nursing facility reimbursement methodology, which will be established in another administrative regulation, from 907 KAR 1:025. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

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

907 KAR 1:025E. Payment for services provided by a cost-based nursing facility, a nursing facility with an all-inclusive rate unit, and a hospital with federally-defined swing beds. [Payments for nursing facility and intermediate care facility for the mentally retarded services.]

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

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

EFFECTIVE: January 18, 2000

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

Section 1. Definitions. (1) "All other costs" means:

- (a) Other care-related costs;
- (b) Other operating costs;
- (c) Capital costs; and
- (d) Indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department [cabinet] in establishing the reimbursement rate. [Cost shall be considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care; and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."]

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

- (a) Ancillary services pursuant to 907 KAR 1:023; and
- (b) If ordered by a physician:

- 1. [physical, occupational and speech therapy;
- (b)] Laboratory procedures;
- 2. [(e)] X-ray;

[(d) Oxygen and other related oxygen supplies;

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

(c) [(f)] Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded or developmentally disabled only); and

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

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

- (a) Calculated [computed] rate arrived at; and
- (b) After [when] otherwise allowable costs are trended and adjusted in accordance with the:

- 1. Inflation factor; and
- 2. [(the) Occupancy factor, [-and
- 3. The Median cost center per diem upper limits.]

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

(a) An intermediate care facility for the mentally retarded or developmentally disabled; or

(b) A nursing facility, certified as:

- 1. A dual-licensed pediatric facility; or
- 2. An institution for the mentally diseased.

(6) "Cost-based nursing facility" means a nursing facility which:

- (a) The department shall reimburse for all allowable costs; and
- (b) Is either:

- 1. A dual-licensed pediatric facility;
- 2. An intermediate care facility for the mentally retarded or developmentally disabled; or

3. An institution for the mentally diseased.

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

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

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

(9) [(8)] "ICF-MRs" means intermediate care facilities for the

mentally retarded or developmentally disabled.

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

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

[(11)] "Nursing facilities with waiver (NFs-W)" means facilities certified to the Medicaid Program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.]

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

(a) The state survey agency has:

1. Granted an NF license to a facility;

2. Recommended the NF to the department for certification as a Medicaid provider; and

(b) The department has granted certification for Medicaid participation to the NF. [A facility certified to the Medicaid Program by the state survey agency as meeting all nursing facility requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds) meeting all conditions of participation in the Medicare Program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b), (4)(c), (ii), unless the context specifies otherwise.]

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

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

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

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

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

(16) [(18)] "Routine services" means services that shall be provided pursuant to 42 CFR 483.10(c)(8)(i). [the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include the following:

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

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouth washes shall be allowable as routine services if generally furnished to all patients;

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

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

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

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

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

Section 2. Reimbursement for a Cost-based Nursing Facility. (1)

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

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

(3)(a) A cost-based nursing facility desiring to participate in Medicaid shall be required to have the greater of:

(a) Ten (10) of its Medicaid certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid certified beds participating in the Medicare Program;

(2) If the NF has less than ten (10) beds all of its beds shall participate in the Medicare Program;

(3) [at least twenty (20) percent of its Medicaid participating beds; (but not less than ten (10) beds ; for a facility with less than ten (10) beds, all beds) participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds (but less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program.

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

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

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

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

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

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

(c) [(b)] An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered [only] if

a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases; or
2. A staffing ratio increase; and
3. If the increase was not included in the DRI; or
4. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation that [or written policy which] affects all facilities within the class; or

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

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

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

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

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

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

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

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

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

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

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

a. The urban array shall include all facilities within a standard metropolitan statistical area:

b. The rural array shall include all facilities in nonstandard metropolitan statistical area counties:

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey):

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each:

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital-based nursing facilities shall be set

at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRs shall be set at 120 percent of the appropriate upper limit for freestanding facilities:

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied:

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. Hospital dual-licensed beds shall be paid at the hospital-based facility upper limits;

d. Facilities recognized as providing ventilator-dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be equal to projected costs; and

e. Facilities which are Medicaid-certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.]

(c) [4.] Other factors relating to costs [and upper limit determination] shall be:

1. [a.] If the department [cabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [cabinet] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [cabinet] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

[b. The allowable per diem cost for NFs (excluding swing beds, dual-licensed hospital beds, and facilities with all-inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.]

2. [c.] A special access and treatment fee shall be added to the facility per diem [(without regard to upper limits)] for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

3. [d.] The maximum payment amounts for the prospective universal [uniform] rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

4. [e.] For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. [Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.]

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost

limits under federal regulations.

(c) A [Any] percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [cabinet] exceeding twenty-five (25) percent of billed charges; or

2. If [Where] an evaluation by the department [cabinet] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds at [all levels].

(c) Compensation for owners and nonowner administrators [(except for nonowner administrators of intermediate care facilities for the mentally retarded or developmentally disabled and dual licensed pediatric facilities)] shall not exceed the amounts specified in the Cost-based Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if [when] it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if [when] an individual [(or individuals)] possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if [when] fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for cost-based nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded or developmentally disabled entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [cabinet] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies,

conferences, or any related activities), specified vehicle costs as shown in the Cost-based [Kentucky-Medicaid-Program] Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [cabinet]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be [are] allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner [owner(s)] to a new owner [owner(s)] for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets. An [(a)-No] increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985, [except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984].

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a) (13)(G) and the Reimbursement Manual at pages 350.03-350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.]

(11) Each facility shall maintain and make available any records (in a form acceptable to the department [cabinet]) which the department [cabinet] may require to justify and document all costs to and services performed by the facility. The department [cabinet] shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department [Cabinet] approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If [When] a request for prior approval of projections or expansions is made, absence of a response by the department [cabinet] shall not be construed as approval of the item or expansion.

(13) The department [cabinet] shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. [Field audits shall be conducted when determined necessary.] A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. [An audit of ancillary cost shall be conducted as needed.]

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department [cabinet] may develop and utilize a methodology to assure an adequate level of care. Facilities determined by the department [cabinet] to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) A [Each] facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility [with the department's [cabinet's] concurrence].

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department [cabinet].

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

(c) [1-] The department [cabinet] may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

(d) [2-] The department [cabinet] may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing cost-based nursing facility participates in the program under this payment system.

[(18) Qualifying nursing facilities (but not including swing beds, dual-licensed hospital beds, institutions for mental diseases, pediatric

facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive:

(a) Facilities qualifying for the cost savings incentive (except for NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array:

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array:

(c) NF-MRSs shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.]

(18) [(19)] Intermediate care facilities for the mentally retarded or developmentally disabled may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. [No] Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded or developmentally disabled:

(Effective 10-1-90)		
Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$.87
97.00 -102.99	1.29	\$.75
103.00 -108.99	1.18	\$.62
109.00 -114.99	1.06	\$.47
115.00 -120.99	.92	\$.31
121.00 -126.99	.76	\$.13
127.00 -133.49	*.53	----

*There is no maximum payment limit for intermediate care facilities for the mentally retarded or developmentally disabled.

[(20) Hold harmless. The NFs (but not including swing beds or dual-licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992:

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system:

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation:

(21) An adjustment shall be made to the usual rate for ICF-MRs; institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category:

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost:

(a)1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low intensity), the PRO will then determine the case weight):

2. The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs:

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs:

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency.

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(19) [(24)] The provider tax on cost-based nursing facilities shall be considered allowable cost for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation for a Cost-based Nursing Facility. The prospective rate for a cost-based nursing [each] facility [(taking into account the factors described in this administrative regulation [and the case mix methodology shown in the Nursing Facility Reimbursement Manual])] shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy; and

(3) [Adjustments to allowable cost related to application of upper limits;

(4)] Adjustments to allowable cost related to application of [the cost savings incentive factor, or for ICF-MRIs,] the cost incentive and investment schedule for ICF-MRs. [;]

[(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, The cost basis and the upper limits shall be revised annually using the latest available cost reports and

assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.]

Section 6. Reimbursement for a Nursing Facility with a Distinct Part Ventilator Unit. (1) A nursing facility recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate for services provided in the distinct part ventilator unit:

(2) A distinct part ventilator unit shall:

(a) Have a minimum of twenty (20) beds;

(b) Maintain a census of fifteen (15) patients; and

(c) The patient census shall be based upon:

1. The quarter preceding the beginning of the rate year; or

2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year.

(3) The fixed rate for hospital-based facilities shall be \$460 per day.

(4) The fixed rate for freestanding facilities shall be \$250 per day.

(5) The rates shall be increased or decreased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year.

(6) Costs of distinct part ventilator nursing facility units shall be excluded from allowable cost for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Brain Injury Unit. (1) A nursing facility with a Medicaid certified brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem for services provided in the brain injury unit.

(2) A facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facility's usual and customary charges.

Section 8. Reimbursement for a Hospital with Federally-defined Swing Beds. The reimbursement rate for a federally-defined hospital swing bed shall be:

(1) The average rate per patient day paid to cost-based nursing facilities for routine services furnished during the preceding calendar year; and

(2) Established effective January 1 of each year.

Section 9. Reimbursement Review and Appeal. Participating facilities may appeal department [cabinet] decisions as to application of this administrative regulation as it impacts the reimbursement rate to an NF governed by this administrative regulation [the general policies and procedures] in accordance with 907 KAR 1:671, Section 10 [Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure, claims processing, withholding overpayments, appeals process, and sanctions].

Section 10. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a cost-based nursing facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a cost-based nursing facility for a service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the cost-based nursing facility's participation in the Medicaid Program.

Section 11. Reimbursement Provisions. (1) Each of the following

types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

- (a) A nursing facility with a certified brain injury unit;
- (b) A nursing facility with a distinct part ventilator unit;
- (c) A hospital with federally-defined swing beds;
- (d) A nursing facility designated as an institution for the mentally diseased;

- (e) A dual licensed pediatric facility; or
- (f) An intermediate care facility for the mentally retarded or developmentally disabled.

(2) Payment shall be made in accordance with the requirements established in 907 KAR 1:022.

Section 12. Prospective Rate Methodology. (1) Medicaid expenditures in the aggregate for cost-based nursing facilities and price-based nursing facilities pursuant to 907 KAR 1:065E during the rate year beginning July 1, 1999 and ending June 30, 2000 shall not exceed \$534,600,000, including appeal and ancillary settlements.

(2) In order to ensure that expenditures do not exceed the amount established in subsection (1) of the section, the department shall:

(a) Compile a spreadsheet of cost-based nursing facilities which contains actual data by facility, for each month and year beginning with July 1, 1999 and includes the following items:

- 1. Patient days paid;
- 2. Routine costs paid;
- 3. Ancillary costs paid;
- 4. Medicare crossovers paid;
- 5. Patient liability collected;
- 6. Third-party liability collected;
- 7. Appeal settlements; and
- 8. Year-end ancillary settlements;

(b) Compile a detailed listing of licensed cost-based nursing facility beds and current approved certificates of need that shall be included in the projected \$534,600,000 budgeted limit; and

(c) Distribute monthly the Medicaid spreadsheets containing the data identified in subsection (2) of this administrative regulation to the:

- 1. Technical Advisory Committee on Nursing Home Care;
- 2. Advisory Council for Medical Assistance;
- 3. Budget Review Subcommittee on Human Resources; and
- 4. Upon request, to other interested parties.

Section 13. Reimbursement Methodology for a Cost-based Nursing Facility for State Fiscal Year 1999-2000. The provisions of this section shall be applicable to payments to cost-based nursing facilities made for the state fiscal year 1999-2000.

(1) Payments to facilities specified in subsection (1) of this section are included in the \$534,600,000 biennium budget cap for state fiscal year 1999-2000.

(2) The department shall remain at risk for increases in total cost-based nursing facility payments which result from higher utilization of beds by Medicaid recipients than the utilization used to establish the 1999 rate.

Section 14. Incorporation by Reference. (1) The "Cost-Based Nursing Facility Reimbursement Manual", Department for Medicaid Services, 12/99 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1995.]

DENNIS BOYD, Commissioner
JOHN H. WALKER, Attorney
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: January 11, 2000
FILED WITH LRC: January 18, 2000 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(1) Type and number of entities affected: 18

(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 is held.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing is held.

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

- 1. First year following implementation: 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. Federal matching funds of 70.55% equaling \$ and state matching funds of 29.45% equaling \$ (will be expended). State revenues will come from biennial budget.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing.

(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: Health and welfare needs of Medicaid recipients receiving services from cost-based nursing facilities and nursing facilities with all-inclusive rates will be met.

(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 health, safety, and welfare of some Medicaid recipients because cost-based nursing facilities and nursing facilities with all-inclusive rates would lack funding for providing services to these individuals.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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 indi-

gent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY **907 KAR 1:065E**

This emergency administrative regulation is being promulgated to establish a more equitable reimbursement methodology for providers of nursing facility services. This action must be taken on an emergency basis to ensure the public health, safety, and welfare of Medicaid recipients in nursing facilities. 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 failure to implement a more equitable reimbursement methodology may result in a lack of availability of nursing facility services. 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 Long Term Care**

907 KAR 1:065E. Payments for price-based nursing facility services.

RELATES TO: 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 483.10(i), 42 USC 1396a, b, c, d, g, n, o, p, r, r-2, r-5

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520, 1998 Ky. Acts ch. 615 Part I.G. 41

EFFECTIVE: January 18, 2000

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 method for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility.

Section 1. Definitions. (1) "Allowable cost" means that portion of a price-based nursing facility's cost which may be allowed by the department in determining the ancillary cost.

(2) "Ancillary cost-to-charge ratio" means the total cost of ancillary services provided by a NF to its residents divided by the total customary and usual ancillary charges.

(3) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate and shall include:

- (a) Ancillary services pursuant to 907 KAR 1:023; and
- (b) If ordered by a physician:
 - 1. Laboratory procedures; and
 - 2. X-ray;

(4) "Appraisal" means an evaluation conducted by the department for the purpose of calculating the depreciated replacement

cost of a nursing facility (NF).

(5) "Capital cost component" means the appraised depreciated replacement cost plus a value for land and equipment adjusted for rate of return and a per diem amount.

(6) "Case-mix" means the average NF acuity for Medicaid eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a nursing facility.

(7) "Cost settlement" means a NF's billed charges for ancillary services that are retrospectively settled to the cost of ancillary services provided to Medicaid residents.

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

(9) "DRI" means an indication of changes in health care cost from year to year developed by Data Resources Incorporated.

(10) "Hospital-based NF" means a NF that:

- (a) Is separately identifiable as a distinct part of the hospital; and
- (b) If separated into multiple, but distinct parts of a single hospital, are combined under one (1) provider number.

(11) "Means Construction Index" means an indicator of changes in construction costs from year to year developed by the R.S. Means Company, Inc.

(12) "Metropolitan Statistical Area (MSA)" means the designation of urban population centers based on the national census and updated on a yearly basis, as published by the Federal Office of Management and Budget.

(13) "Nursing facility (NF)" means that:

- (a) The state survey agency has:
 - 1. Granted a NF license to a facility;
 - 2. Recommended the NF to the department for certification as a Medicaid provider; and
- (b) The department has granted certification for Medicaid participation to the NF.

(14) "Nursing facility with Medicaid waiver (NF-W)" means that:

- (a) The state survey agency has:
 - 1. Granted a NF license to a facility;
 - 2. Recommended the NF to the department for certification as a Medicaid provider; and
- 3. Granted the NF a waiver of the nursing staff requirement; and
- (b) The department has granted certification for Medicaid participation to the NF.

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

(16) "Routine services" means the services covered by the Medicaid Program pursuant to 42 CFR 483.10(c)(8)(i).

(17) "State survey agency" means the Cabinet for Health Services, Office of Inspector General, Division of Licensing and Regulation.

(18) "standard price" means the daily base reimbursement rate for routine services for an eligible Medicaid recipient, excluding the following NF specific adjustments:

- (a) Case-mix; and
- (b) Appraised depreciated replacement cost.

Section 2. Reimbursement for a Price-Based NF. (1) The following facilities shall be reimbursed as a price-based NF pursuant to Sections 3 and 4 of this administrative regulation:

- (a) A NF;
- (b) A NF-W;
- (c) A hospital-based NF; and
- (d) A NF-MRS;
- (2) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025E:
 - (a) A NF with a certified brain injury unit;
 - (b) A NF with a distinct part ventilator unit;
 - (c) A NF designated as an institution for mental disease;
 - (d) A pediatric NF;
 - (e) An intermediate care facility for an individual with mental retardation or developmental disability; or
 - (f) Federally defined swing bed.
- (3) A NF identified in subsection (1) of this section shall be reimbursed by the Medicaid Program as a price-based NF if the patient:

- (a) Is eligible to participate in the Medicaid Program;
- (b) Is determined by the department to meet the level of care for NF services; and
- (c) Occupies a Medicaid certified bed.
- (4) Medicaid shall be the payor of last resort.
- (5) Except as provided in subsection (7) of this section, to participate in the Medicaid Program, a NF identified in subsection (1) of this section shall be required to have the greater of:
 - (a) Ten (10) of its Medicaid certified bed participating in the Medicare Program; or
 - (b) Twenty (20) percent of its Medicaid certified beds participating in the Medicare Program.
- (6) If the NF has less than ten (10) beds all of its beds shall participate in the Medicare Program.
- (7) A NF-W shall be exempt from the requirement established in subsection (5) and (6) of this section.
- (8) The Medicaid Program shall reimburse a Medicaid bed in a NF at the same rate established for the entire NF.

Section 3. Priced-Based NF Reimbursement Methodology. (1) Rates shall reflect the differential in wages, property values and cost of doing business in rural and urban designated areas.

(2) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

- (a) Staffing ratios;
 - (b) Wage rates;
 - (c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;
 - (d) Fringe benefit levels;
 - (e) Capital cost component, as determined by an appraisal by the department's, designee of each individual NF; and
 - (f) Noncapital facility related costs.
- (3) Using the Metropolitan Statistical Area (MSA) designation as defined by the Federal Office of Management and Budget, a price-based NF shall be reimbursed according to the following designations.

- (a) Urban; or
- (b) Rural.

(4) Pursuant to the methodology described in subsection (2) of this section and in accordance with the designation described in subsection (3) of this section, a NF shall be assigned a standard price as follows:

MSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price without Capital Cost Component	Total Standard Price
Urban	\$61.83	\$41.92	\$103.75
Rural	\$51.03	\$36.53	\$87.56

(5) For the urban and rural designation, the case-mix adjustable portion of the standard price is computed pursuant to subsection (6) of this section and reflects an average case-mix acuity of one (1).

(6) The components of the case-mix adjustable portion of the standard price shall be:

- (a) The personnel cost of a:
 - 1. DON - Director of nurse;
 - 2. RN - registered nurse;
 - 3. LPN - licensed practical nurse;
 - 4. Nurse aide;
 - 5. Activities worker;
 - 6. Medical records director;
- (b) The nonpersonnel operating cost including:
 - 1. Medical supplies; and
 - 2. Activity supplies.

(7) The components of the noncase mix adjustable portion of the standard price shall include:

- (a) Administration;
- (b) Nondirect care personnel;
- (c) Food;
- (d) Noncapital facility related costs;
- (e) Professional support;
- (f) Consultation; and

(g) Capital cost component.

(8) The capital cost component identified in subsection (7)(g) of this section shall be an add-on to the noncase-mix adjustable portion of the standard price without capital cost component, as identified in subsection (4) of this section.

(9) The standard price shall be:

(a) Established effective on January 1, 2000 representing the state fiscal year July 1, 1999 through June 30, 2000;

(b) Recomputed every July 1 based on the DRI and the R.S. Means Construction Index;

(c) Rebased every four (4) years thereafter in accordance with criteria contained in subsection (2) of this section.

(10) A NF receiving less than the standard price shall have its rate adjusted for inflation on July 1 of each year pursuant to the DRI.

(11) The department shall adjust the standard price if:

(a) A government entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the DRI;

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency which results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of licensure requirement or policy interpretation.

Section 4. Priced-Based NF Reimbursement Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's price-based rate to be the sum of:

(a) The case-mix adjustable portion of a NF standard price, adjusted by the current average case-mix index pursuant to Section 5 of this administrative regulation, except that until July 1, 2000 the average case-mix index shall be the greater of:

- 1. The current average case-mix index; or
- 2. The case-mix average calculated as a ratio of the facility's case-mix index to the statewide average case-mix index that would have been used for January 1, 2000 rate setting;

(b) The noncase mix adjustable portion of the assigned total standard price; and

(c) Pursuant to subsection (3) of this section, the capital cost component.

(2) Pursuant to Section 1(12) of this administrative regulation, the designation of urban and rural counties shall be updated in accordance with the MSA designation on July 1, 2000 and every July 1 thereafter.

(3) The capital cost component shall be calculated on an individual facility basis as follows:

(a) The department shall:

1. Add the total of:

a. The average licensed bed value pursuant to paragraph (b) of this subsection;

b. Ten (10) percent of the licensed bed value pursuant to clause a of this subparagraph for land on which the NF is built; and

c. \$2,000 for equipment; and

2. Multiply the sum of subparagraph 1 of this paragraph by the yield on a thirty (30) year Treasury Bond pursuant to paragraph (d) of this subsection plus a risk factor of two (2) percent that shall not be:

- a. Less than nine (9) percent; or
- b. Greater than twelve (12) percent; and

3. Divide the product of subparagraph 2 of the paragraph by the number of calendar days in the facility's cost report year multiplied by the facility's bed occupancy percentage as determined pursuant to paragraph (c) of this subsection.

(b) To determine the average licensed bed value, the depreciated replacement cost of the NF pursuant to subsection (4) of this section shall be divided by the total number of licensed beds in the NF with the following limitations:

- 1. The average bed value shall not exceed \$40,000; and
- 2. Shall exclude:

- a. Equipment; and
- b. Land;

(c) NF bed days used in the capital cost rate calculation pursuant to paragraph (a)3 of this subsection shall be based on actual bed occupancy, except that the occupancy rate shall not be less than ninety (90) percent of certified bed days;

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(d) The department shall utilize a rate of return for capital costs that shall be equal to the yield on a thirty (30) year Treasury bond as of the first business day on or after:

1. May 31, 1999; and

2. The first business day on or after May 31 thereafter;

(e) Effective with the rate setting period beginning July 1, 2000, the department shall utilize the R.S. Means Construction Index to adjust the following for inflation:

1. The capital cost component pursuant to subsection (4) of this section; and

2. The allowable per bed value pursuant to paragraph (b)1 of this subsection.

(4) The department shall:

(a) Conduct and utilize an appraisal of a NF identified in Section 2(1) of this administrative regulation to calculate the capital cost component identified in subsection (3) of this section;

(b) Reappraise an NF identified in Section 2(1) of this administrative regulation if:

1. Renovations or additions have a minimum total cost of \$150,000 for facilities with more than sixty (60) licensed beds;

2. Renovation or addition have a minimum total cost of \$75,000 for facilities with sixty (60) or fewer licensed beds; and

3. Written proof of construction costs is submitted to the department.

(c) Conduct and utilize a reappraisal of all NF's identified in Section 2(1) of this section for the calculation of the capital cost component effective for July 1, 2004.

(5) A NF requesting a reappraisal of the facility pursuant to subsection (4)(b) of this administrative regulation shall be responsible for the cost of the reappraisal by the state appraisal contractor.

(6) If a change of ownership occurs pursuant to 42 CFR 447.253(2)(d), the new owner shall continue to receive the capital cost rate of the previous owner unless the NF is eligible for reappraisal pursuant to subsection (4)(b) of this section.

Section 5. Minimum Data Set (MDS) 2.0, Resource Utilization Group (RUG) III, and Validation. (1) To determine a NF's average Medicaid case mix index that shall be used on a quarterly basis to calculate the per diem rate pursuant to Section 4(1)(b)1 of this administrative regulation, the department shall:

(a) Extract data from the most recent MDS assessment form, incorporated by reference in 907 KAR 1:755, as transmitted to the Cabinet for Health Services Division of Licensing and Regulation by a NF for each Medicaid or dual eligible Medicaid and Medicare resident;

(b) The data extract shall occur on the last day of each calendar quarter, and be used to set the per diem for the second subsequent quarter per Section 4 of this administrative regulation.

(c) Classify the data through the RUG III, (M3 p1), version five point twelve (5.12B) thirty-four (34) group model resident classification system.

(2) On a quarterly basis, beginning January 1, 2000, the department shall:

(a) Perform an on-site review of the NF;

(b) Review a minimum of ten (10) percent of the MDS assessments completed by the NF; and

(c) Validate MDS assessments by using the Long Term Care Facility Resident Assessment Instrument User's Manual, as contained in 907 KAR 1:755.

(3) If the department invalidates a NF's MDS, the NF may appeal the findings of the department as follows:

(a) Within seven (7) business days, the department shall receive a written request by the NF that the department reconsider the invalidation;

(b) The department shall conduct the second validation within seven (7) business days of receipt of the request and notify the provider in writing of the decision; and

(c) A provider may appeal the second validation per 907 KAR 1:671, Sections 8 and 9.

Section 6. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, a NF that receives reimbursement for a resident pursuant to Section 4 of this adminis-

trative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) A NF may charge a resident or his representative for an item pursuant to 42 CFR 483.10(c)(8)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare or Medicaid does not pay for the item.

(3) A NF shall:

(a) Not require a resident or an interested party to request any item or services as a condition of admission or continued stay; and

(b) Inform the resident or an interested party requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) A NF may charge a resident for the cost of reserving a bed if requested by resident or interested party after the 14th day of a temporary absence from the facility pursuant to 907 KAR 1:022.

(5) Durable medical equipment (DME) and supplies shall:

(a) Be furnished by the NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:474.

Section 7. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 8. NF Protection Period and Budget Constraints. (1) Except as provided in subsection (2) of this section, for the period of January 1, 2000 through June 30, 2002, a NF shall not receive a rate that is less than the rate that was set for the NF pursuant to 907 KAR 1:025E on July 1, 1999, including any capital cost and extenuating circumstance add-ons;

(2) The department shall monitor payments on a monthly basis to ensure that aggregate payments made in accordance with this administration regulation and 907 KAR 1:025E do not exceed the appropriated funds in fiscal years 2000 through 2002.

(3) On a monthly basis, the department shall:

(a) Notify the industry's representatives in writing; and

(b) Place on the Medicaid Internet site at: <http://cfcchs.chs.state.ky.us/chs/dms/>:

1. The amount of payment in aggregate to the NF's for the preceding month; and

2. The cumulative amount paid for the current state fiscal year.

(4) For each year of the biennium, facilities shall:

(a) Receive an increase pursuant to Section 3(9) and (10) of this administrative regulation; or

(b) Receive no increase if a NF's rate is greater than the standard price including the capital rate component.

Section 9. Cost Report. (1) A NF shall submit:

(a) A Medicare cost report and Medicaid supplemental schedules pursuant to time frames established in HCFA Provider Reimbursement Manual Part 2 (Pub. 15-11) Section 102, 102.1, 102.3, and 104, incorporated by reference into this administrative regulation.

(b) A copy of a NF's Medicare cost report for the most recent fiscal year end; and

(c) The supplemental schedules incorporated by reference into this administrative regulation.

(2) A cost report submitted to the department pursuant to this administrative regulation shall be used as follows:

(a) Financial data related to routine services shall be used for statistical purposes; and

(b) Financial data related to ancillary services shall be subject to cost settlement.

Section 10. Ancillary Services. (1) The reasonable, allowable

and direct cost of an ancillary service, provided as a part of total care, shall be reimbursed by the department on a cost-basis and as an addition to the standard price.

(2) For each NF requesting that the department set an interim ancillary rate, the provider shall:

(a) Submit a request for a percentage factor that reflects the NF's cost-to-charge ratio; and

(b) Limit the percentage request to no more than 100 percent of allowable cost.

(3) Ratio of ancillary cost-to-charge adjustments:

(a) In the event that the NF is underpaid for the total ancillary services provided to Medicaid eligible residents as defined in Schedules NF-4 and NF-6, the department shall increase the NF's cost-to-charge ratio to the nearest five (5) percent; or

(b) In the event that the NF is overpaid for the total ancillary services provided to Medicaid eligible residents as defined in Schedules NF-4 and NF-6, the department shall proportionately decrease to the nearest five (5) percent the NF's cost-to-charge ratio up to a reduction of twenty-five (25) percent.

(4) Ancillary services shall be subject to:

(a) A year-end audit by the department;

(b) A retrospective adjustment; and

(c) A final settlement.

(5) For the fiscal year-end ancillary settlement a NF shall:

(a) Include in its cost report the required schedules containing:

1. The actual ancillary service cost;

2. The total ancillary charges;

3. The total Medicaid charges; and

4. Payments made by the department to the NF.

(b) Submit documentation requested by the department in order to settle an interim payments made by the department with cost of ancillary services provided for a NF's reporting period.

Section 11. Reimbursement Review and Appeal. A NF may appeal department decisions as to the application of this administrative regulation as it impacts the NF's price-based reimbursement rate in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-11) Chapter 1. Cost Reporting - General, 15-2-102 and 104, Cost Reporting Period, December 1999 Edition;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules" January 2000 Edition;

(c) The "Supplemental Medicaid Schedules" January 2000 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.

DENNIS BOYD, Commissioner

JOHN H. WALKER, Attorney

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 30, 1999

FILED WITH LRC: January 18, 2000 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(1) Type and number of entities affected: 274 providers of nursing facilities services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the NOI public hearing which will be held pursuant to KRS Chapter 13A.

(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 NOI public hearing which will be held pursuant to KRS Chapter 13A.

(c) Compliance, reporting, and paperwork requirements, includ-

ing factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Changes in cost report requirements.

2. Second and subsequent years: Consistence with year one (1) should slightly reduce paperwork.

(3) Effects on the promulgating administrative body: There will be no impact on the total Medicaid budget. Funding for services identified in this regulation were previously allocated in the biennial budget.

(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: To be determined after the NOI public hearing which will be held pursuant to KRS Chapter 13A.

(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 access to services for individuals as a result of a more equitable reimbursement to providers.

(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 impose an imminent threat to the public health, safety, and welfare of Medicaid recipients due to the lack of availability of services and reductions in the number of available providers.

(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 applied only as it relates to urban and rural rates. Rates will be set to include the cost differential of operating a facility in an urban area to reflect the differential in wages, property values and cost of doing business in a rural and urban areas.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, February 8, 2000)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 164.769

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Critical shortage area" is defined in KRS 164.769(2)(a).

(3) "Eligible program of study" is defined in KRS 164.769(2)(b).

(4) "Expected family contribution" is defined in KRS 164.769(2)(c).

(5) "Participating institution" is defined in KRS 164.769(2)(d).

(6) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, and secondary instruction.

(7) "Qualified teaching service" is defined in KRS 164.769(2)(e).

(8) "Semester" is defined in KRS 164.769(2)(f).

(9) "Summer term" is defined in KRS 164.769(2)(g).

(10) "Teaching" means performing classroom instruction in a position for which teacher certification is a prerequisite to perform such instruction.

Section 2. Eligibility of Renewal Applicants and Selection Process.

(1) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 prior to July 1 [15], 1996 shall be eligible to apply for and be awarded a renewal teacher scholarship without consideration of expected family contribution if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(2) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher schol-

arship award shall be 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 amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, postbaccalaureate, or graduate shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

(3) [(2)] The maximum teacher scholarship award for a student classified as a freshman or sophomore student shall be \$325 for a summer session, \$625 for a semester, and \$1,250 for an academic year (exclusive of a summer session).

(4) [(3)] The maximum award to an eligible student enrolled less than full time in the last semester or summer term during [in] which a baccalaureate, postbaccalaureate or master's degree [the eligible program-of-study] will be completed shall be:

(a) \$210 per credit hour if the student is enrolled during a regular semester; or

(b) \$105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority by electronic funds transfer within ten (10) days of the recipient's withdrawal, expulsion, or failure to register.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds

credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) A recipient who received a teacher scholarship prior to July 1 [15], 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area.

(3) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to attain certification after completion of the eligible program of study or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum.

Section 7. Notifications. A recipient shall notify the authority within thirty (30) days of:

- (1) Change in enrollment status;
- (2) Cessation of full-time enrollment in an eligible program of study;
- (3) Employment in a qualified teaching service position; or
- (4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's published refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

WAYNE STRATTON, Chairman
RICHARD F. CASEY, General Counsel, KHEAA
APPROVED BY AGENCY: December 15, 1999
FILED WITH LRC: December 15, 1999 at noon

OFFICE OF ATTORNEY GENERAL
Child Sexual Abuse and Exploitation Prevention Board
Victims Advocacy Division
(As Amended at ARRS, February 8, 2000;
Deferred to the March 2000 meeting)

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

RELATES TO: KRS 15.900, 15.920, 15.935(1)(b) [15.905 to 15.940, 18.1867], 41.400

STATUTORY AUTHORITY: KRS 15.180, 15.935 (1)(b)
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 includes [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.

(3) ~~[(4)] "Child" is defined by KRS 15.900(1) [means a person under the age of eighteen (18)].~~

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

(5) ~~[(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.~~

(6) "State board" is defined by KRS 15.900(4).

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 state 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 make application on "Application for Child Sexual Abuse Medical Examination Funding Assistance". [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 state 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 shall not exceed \$150 per case.

(3) Applicants for funding assistance shall provide assurances to the state 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 will 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 state 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.

Section 7. Incorporation by Reference. (1) "Application for

Child Sexual Abuse Medical Examination Funding Assistance", October 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Victims Advocacy Division, Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

A. B. CHANDLER III, Attorney General

RICHARD CARROLL, Legal Counsel

APPROVED BY AGENCY: October 27, 1999

FILED WITH LRC: December 14, 1999 at 2 p.m.

KENTUCKY STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS (As Amended at ARRS, February 8, 2000)

201 KAR 18:192. Continuing professional development.

RELATES TO: KRS 322.290(14)

STATUTORY AUTHORITY: KRS 322.290(4), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(14) requires the board to adopt a program of continuing education for professional land surveyors. This administrative regulation implements the continuing professional development program mandated by KRS 322.290(14) for professional land surveyors.

Section 1. Definitions. (1) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering (e.g., passing a university course or attending a seminar).

(2) "Continuing professional development" (CPD) means participation in activities, beyond the basic educational requirements, that provide specific content planned and evaluated to improve the land surveyor's professional competence and:

(a) Encourage acquisition of new skills and knowledge required to maintain competence; and

(b) Strengthen the professional land surveyor's critical inquiry and balanced judgment; and

(c) Raise the ethical standards within the professional community; and

(d) Which meet the requirements established by the provisions of this administrative regulation.

(3) "CPC" means the Continuing Professional Development Committee.

(4) "Professional development hour" (PDH) means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(5) "Provider" means a person, school, association, company, corporation or group who has developed a CPD activity. The provider or its designated representative must participate directly in the presentation.

(6) "Reporting period" means the two (2) calendar-year period immediately before the professional land surveyor's licensure renewal.

(7) "Sponsor" means a group, such as a professional society, offering activities by providers. ["Continuing professional development" (CPD) means participation in activities, beyond the basic educational requirements, that provide specific content planned and evaluated to improve the land surveyor's professional competence and:

(a) Encourage acquisition of new skills and knowledge required to maintain competence; and

(b) Strengthen the professional land surveyor's critical inquiry and balanced judgment; and

(c) Raise the ethical standards within the professional community; and

(d) Which meet the requirements established by the provisions of this administrative regulation.

(2) "Professional development hour" (PDH) means not less than fifty (50) minutes of instruction or presentation that meets the requirements of this administrative regulation.

(3) "Provider" means a person, school, association, company, corporation or group who has developed a CPD activity. The provider or its designated representative must participate directly in the presentation.

(4) "Sponsor" means a group, such as a professional society, offering activities by providers.

(5) "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering (e.g., passing a university course or attending a seminar).

(6) "Reporting period" means the two (2) calendar year period immediately before the professional land surveyor's licensure renewal.

(7) "CPG" means the Continuing Professional Development Committee.]

Section 2. Continuing Professional Development Committee. (1) The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair at the first regularly scheduled meeting of the board every calendar year.

(2) The CPDC shall consist of at least four (4) members of which at least two (2) members are members of the Kentucky Association of Professional Surveyors. The CPDC shall include at least two (2) members of the board who are professional land surveyors.

(3) Work of the CPDC shall be considered work of the board and compensation shall be given as provided by KRS 322.270.

(4) The CPDC shall hold regular meetings and a record of its action shall be maintained.

(5) The CPDC **shall have** [has] the authority to rule on all matters concerning continuing professional development. Decisions of the CPDC **shall** [must] be ratified by the board. Anyone who disagrees with a decision of the CPDC may direct his concerns to the board for consideration at the board's next meeting.

Section 3. Program Structure. (1) Except as provided otherwise in this administrative regulation, a professional land surveyor shall complete and report to the board a minimum of eight (8) professional development hours for each calendar year. The eight (8) professional development hours shall include:

(a) A course in professional ethics which shall be:

1. Approved by the CPDC as meeting the ethics requirement;

2. Taken in accordance with Section 4 of this administrative regulation;

3. Taken once before the end of four (4) calendar years from previous attendance.

(b) A course in standards of practice for professional land surveyors which shall be:

1. Sponsored by the board;

2. Taken in accordance with Section 4 of this administrative regulation;

3. Taken once before the end of four (4) calendar years from previous attendance.

(2) A maximum of four (4) hours in excess of the eight (8) professional development hours required to be earned in a calendar year may be carried forward to the next calendar year.

(3) Failure to earn the eight (8) professional development hours shall constitute unprofessional conduct.

Section 4. Criteria for Professional Development. (1) Professional development hours may be earned by successful completion of the following activities subject to approval by the CPDC and board:

(a) College or university courses;

(b) Seminars;

(c) Tutorials;

(d) In-house programs sponsored by corporations or other organizations;

(e) Correspondence courses;

(f) Televised or videotaped courses with approved supervision;

(g) Distance learning courses with approved supervision;

(h) Teaching or instructing courses, programs, or items specified in this subsection. The credit may be claimed at twice the number of hours permitted participants;

(i) Making or attending approved presentations at technical or professional meetings; or

(j) Publication of papers, articles, or books related to the practice of land surveying.

(2) Activities described in subsection (1) of this section shall:

(a) Be relevant to the practice of land surveying;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning, presented sequentially;

(d) Be conducted by individuals with education, training, or expertise acceptable to the CPDC;

(e) Be offered for the number of professional development hours approved by the CPDC; and

(f) Not include in-service training, orientation to specific institutional policies and practices, or time used to sell or advertise a product.

(3) CPD activities shall earn credit only when substantially different from a course for which credit was granted in the previous two (2) calendar years.

(4) Professional development hours shall be converted as follows:

(a) One (1) university semester hour shall equal fifteen (15) professional development hours.

(b) One (1) university quarter hour shall equal ten (10) professional development hours.

(c) One (1) continuing education unit shall equal ten (10) professional development hours.

(5) Unless stated otherwise in this administrative regulation, credit for courses shall be earned at the rate of one (1) professional development hour for each hour of instruction completed, if approved by the CPDC.

Section 5. Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors as follows:

(1) Approval of activities is valid for a specified approval period or until alteration of the activity is approved by the CPDC.

(2) Failure to notify the CPDC of a change in an activity may render approval of the activity null and void.

(3) Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors without a conspicuous notice that the activity has been "submitted for consideration."

(4) If prior approval is desired, a written request for approval of the activity shall be submitted to the CPDC on "Continuing Professional Development Course Approval Form" at least sixty (60) days prior to presentation of the activity. All other requests for approval of an activity shall be submitted to the CPDC on a "Continuing Professional Development Course Approval Form" at least two (2) weeks before the CPDC meeting which considers the activity for approval.

(5) All requests for approval of an activity shall be accompanied by:

(a) A detailed outline and objectives;

(b) A time outline including registration, introductions, welcomes, breaks, and meals;

(c) Handouts or reference materials needed to evaluate the activity; and

(d) A resume for each instructor or speaker in the activity.

(6) The CPDC or board reserves the right to send a representative to monitor an activity:

(a) The provider or sponsor shall waive all fees for the CPDC or board representative; and

(b) Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.

(7) An evaluation form shall be made available for participants at each presentation.

(8) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board **shall be** [is] prohibited from presenting a CPD activity for credit without specific approval from the board.

(9) When a provider fails to obtain prior approval, a professional land surveyor may request credit for an activity by making a written request to the CPDC and including the items listed in subsection (5)

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of this section.

(10) Upon approval, an activity will receive a CPD number which shall be used to identify the activity.

(11) If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall [will] be presented to the board at its next meeting for ratification.

Section 6. Exemptions and Extensions. The following professional land surveyors may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption:

(1) A professional land surveyor shall be exempted for the calendar year in which he is initially licensed by the board.

(2) A professional land surveyor who cannot satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance may be exempted for the calendar year in which the disability, illness, or extenuating circumstance occurs. The CPDC may grant an extension of time to fulfill the yearly CPD requirement for an extenuating circumstance.

(3) An exemption or extension request shall be made in writing for each calendar year and the exemption or extension is only valid for that calendar year.

Section 7. Reinstatement. Before a license is reinstated by the board, a former professional land surveyor shall earn the continuing professional development hours required for each year his license was revoked, suspended, or expired, up to a maximum of thirty-two (32) professional development hours.

Section 8. Reporting. By January 15 following each reporting year, every professional land surveyor shall report, in writing to the board, the CPD programs attended and the corresponding professional development hours earned. This report shall be certified and signed by the professional land surveyor. Reports filed after January 15, shall be accompanied by a \$100 late fee and shall be subject to an audit.

Section 9. Audits. (1) Compliance with the annual CPD requirements shall be determined through an audit process. Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board. Individuals selected for audit shall provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include [includes]:

(a) Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation.

(b) Information regarding seminar or course content, instructors, and sponsoring organizations.

(2) Verification records and documentation for audit purposes shall be maintained by individual licensees for a period of three (3) years after completion of the CPD activity.

(3) If the board disallows continuing professional development credit pursuant to an audit, a licensee shall, before June 1 following the reporting period:

(a) Substantiate the disallowed continuing professional development credit; or

(b) Earn sufficient hours to meet the CPD requirement.

(4) Failure to comply with the CPD requirements shall result in non-renewal of the professional land surveyor's license without a hearing.

Section 10. Incorporation by Reference. (1) "Continuing Professional Development Course Approval Form", (November, 1999), State Board of Licensure for Professional Engineers and Land Surveyors is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOSEPH F. SISLER, Chair

CHERYL LALONDE-MOONEY, Assistant Attorney General

APPROVED BY AGENCY: December 13, 1999
FILED WITH LRC: December 15, 1999 at 11 a.m.

KENTUCKY BOARD OF NURSING (As Amended at ARRS, February 8, 2000)

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 create the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026 requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters or its equivalent; and for a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

(3) "Committee" means the Kentucky Nursing Incentive Scholarship Fund Committee.

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(11) [(15)].

(5) "Program of nursing" means either a prelicensure, BSN completion or graduate nursing program.

(6) "Successful academic progression" means:

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of eight (8) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For a graduate nursing program, the completion of a minimum of six (6) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed "Nursing Incentive Scholarship Application" by June 1 to apply for a scholarship for the following academic year.

(3) An applicant shall attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year.

Section 3. The Committee. (1) A member of the committee shall serve for two (2) years and may be reappointed.

(2) The committee shall meet at least annually by July 15 and more often if necessary to decide on scholarships for the upcoming academic year.

(3) A member of the committee shall:

(a) Serve without compensation; and

(b) Be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The committee shall consider the following criteria in evaluating an applicant and shall award points as follows:

(1) Preference categories as specified in KRS 314.025(2):

(a) Licensed practical nurses, twenty-five (25) points;

(b) Registered nurses pursuing graduate nursing education, twenty-five (25) points; and

(c) Financially needy Kentucky residents, forty (40) [twenty-five (25)] points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.

(2) Potential for academic success, as follows: [(a)] High school,

vocational school, college or university grade point average for which ever institution the applicant most recently attended:

(a) [1-] Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) [2-] Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) [3-] Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points.

[(b) Successful progression in a program of nursing shall be equal to five (5) points for each semester or quarter, to a maximum of ten (10) points.]

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points.

Section 5. Amount of Award. (1) The committee shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)(a) The committee shall first make awards to those recipients who:

1. Received an award in the previous year; and

2. Remain eligible to receive an award pursuant to Section 7 of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the committee shall make an award to other eligible applicants.

Section 6. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:

(a) Has enrolled; and

(b) Is in good standing in the nursing program.

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

(a) Maintains successful academic progression through the program;

(b) Has continued maintenance of a preference category; and

(c) Submits to the board a completed "Nursing Incentive Scholarship Fund Request for Continuation" form by June 1.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.

(3) An award recipient in a practical nursing program shall not be eligible for a continued award while enrolled in that program.

Section 8. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract".

(2) The recipient shall sign a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

Section 9. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

(a) Nursing program in which he is enrolled within the time specified by the program of nursing; or

(b) Required employment as specified in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repay-

ment if the student fails to achieve successful academic progression. This deferment shall apply for one (1) academic year. If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the committee on a "Nursing Incentive Scholarship Fund Request for Deferment" form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the form shall be accompanied by a physician's statement.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

Section 10. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 11. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application (10/96)";

(b) "Nursing Incentive Scholarship Fund Request for Continuance (10/96)";

(c) "Nursing Incentive Scholarship Fund Request for Deferral (10/96)";

(d) "Nursing Incentive Scholarship Fund Contract (10/96)"; and

(e) "Nursing Incentive Scholarship Fund Promissory Note (10/96)".

(2) This material [These forms] may be inspected, copied, or obtained at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 a.m. to 4:30 p.m. [Monday through Friday.]

JUNE BELL, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 15, 1999

FILED WITH LRC: December 13, 1999 at 11 a.m.

KENTUCKY BOARD OF NURSING (As Amended at ARRS, February 8, 2000)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 314.142

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological and social health.

Section 2. SANE Course Approval Application. On the form "Application for Initial or Continued SANE Course Approval", the applicant for approval of a SANE course shall submit evidence of:

(1) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be

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administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(2) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title and credentials identifying the educational and professional qualifications for each instructor shall be provided.

(3) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements and fees.

(b) Course outcomes. The outcomes shall provide statements of observable competencies, which when taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner.

(c) Unit objectives. Individual unit objectives shall be stated in operational or behavioral terms with supportive content identified.

(d) Content. The content shall be described in detailed outline format with corresponding lesson plans and time frame. The content shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes.

1. The SANE course shall include:

a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3 of this paragraph; and

b. The clinical practice experience required by subparagraph 2 of this paragraph.

2. Clinical practice. The clinical portion of the course shall be [by] a minimum of sixty (60) hours and shall [must] include: [include supervised clinical practice, whereby students complete ten (10) pelvic and rectal examinations to include both male and female, and two (2) forensic examinations of sexual assault victims;]

a. Supervised detailed genital inspection, speculum examination, visualization techniques and equipment - twenty six (26) hours.

b. Supervised mock sexual assault history taking and examination techniques with evaluation - ten (10) hours.

c. Observing criminal trials or meeting with Commonwealth Attorney - sixteen (16) hours.

d. Meeting with rape crisis victim advocate or mental health professional with expertise in the treatment of sexual assault individuals - four (4) hours.

e. Meeting with members of law enforcement - four (4) hours.

3. The didactic portion of the course shall include instruction in the following topics related to forensic evaluation of individuals reporting sexual assault [victims]:

a. The role and responsibilities of a sexual assault nurse examiner, health care professional, rape crisis, law enforcement and judicial system personnel;

b. Application of the statewide medical protocol relating to the forensic and medical examination of individuals reporting [victims of] sexual assault pursuant to KRS 216B.400(2);

c. Principles and techniques of evidence identification, collection, evaluation, [and] preservation and chain of custody;

d. Assessment of [victim] injuries, including injuries of forensic significance;

e. Physician consultation and referral;

f. Medicolegal documentation;

g. Victim's bill of rights, KRS 421.500 through 421.550;

h. Crisis intervention;

i. Dynamics of sexual assault;

j. Testifying in court;

k. Overview of the criminal justice system and related legal issues; [and]

l. Available community resources including rape crisis centers;

m. Historical development of forensic nursing conceptual model;

n. Cultural diversity and special populations;

o. Ethics;

p. Genital anatomy, normal variances and development stages;

q. Health care implications and interventions; and

r. Developing policies and procedures.

(e) Teaching methods. The activities of both instructor and learner shall be specified in relation to content outline. These activities shall be congruent with stated course objectives and content, and reflect application of adult learning principles.

(f) Evaluation. There shall be clearly defined methods for evaluating the learner's achievement of course outcomes. There shall also be a process for annual course evaluation by students, providers, faculty,

and administration.

(g) Instructional or reference materials. All required instructional materials and reference materials shall be identified.

(4) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3. (1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date and site of the course; and

(b) Participant roster, with a minimum of names, Social Security numbers and license numbers.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the "Application for Initial or Continued SANE Course Approval".

(3) Continued approval shall be based on the past approval period performance and compliance with board standards.

Section 5. The board may deny, revoke or suspend the approval status of a SANE course for cause.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the following procedure shall be followed:

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE credential shall:

(a) Hold a current, active registered nurse license in Kentucky;

(b) Have completed a board approved SANE educational course or a comparable course. The board or its designee shall evaluate the applicant's course to determine its course comparability. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;

(c) If the applicant has completed a comparable course, complete that portion of a SANE course of at least five (5) hours which shall include those topics specified in Section 2(3)(d)3a, b, c, g, k, and l of this administrative regulation if not included in the comparable course. The Office of the Attorney General may offer in cooperation with a board approved continuing education provider a course of at least five (5) hours to include those topics specified in this paragraph;

(d) Complete the "Application for Initial SANE Credential"; and

(e) Pay the fee established in 201 KAR 20:240.

(2) Upon completion of the application process, the board shall issue the SANE credential for a biennial period of November 1 through October 31 of even numbered years.

Section 8. Renewal. (1) To renew the SANE credential for the next biennial period, each sexual assault nurse examiner shall com-

plete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the "Application for Renewal of SANE Credential" and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required thirty (30) contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than two (2) consecutive registered nurse licensure periods, the individual may reinstate the credential by:

(a) Submitting the "Application for Reinstatement of the SANE Credential";

(b) Paying the fee established in 201 KAR 20:240; and

(c) Submitting evidence of earning the continuing education requirement for the number of registered nurse licensure periods since the SANE credential lapsed.

(2) If the SANE credential has lapsed for more than two (2) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Initial or Continued SANE Course Approval" (6/97), Kentucky Board of Nursing;

(b) "Application for Initial SANE Credential" (6/97), Kentucky Board of Nursing;

(c) "Application for Renewal of SANE Credential" (6/97), Kentucky Board of Nursing; and

(d) "Application for Reinstatement of the SANE Credential" (6/97), Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:30 a.m. to 4:30 p.m.

JUNE BELL, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 15, 1999

FILED WITH LRC: December 13, 1999 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long-term Care
(Amended After Hearing)

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~~ [adoptive] 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 reasonably 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 Ancil-

lary 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 **who was not involved with the initial on-site review or determination** 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 **who was not involved with the initial on-site review or determination** 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, **February 2000** [October 1999] edition;

(b) The "Technical Criteria for Reviewing Ancillary Services for Pediatrics", Department for Medicaid Services, **February 2000** [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 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:

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~~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: February 2, 2000

FILED WITH LRC: February 3, 2000 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(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 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:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 2000

KENTUCKY BOARD OF PHARMACY
(Amendment)

201 KAR 2:045. Technicians.

RELATES TO: KRS 315.010(18), (25), 315.020(4)(b), 315.191(1)(a), (g), (l)

STATUTORY AUTHORITY: KRS 315.010(18), (25), 315.020(4)(b), 315.191(1)(a), (g), (l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations governing pharmacy technicians. KRS 315.010(18) authorizes the board to permit a pharmacy technician to work under the general supervision of a pharmacist. KRS 315.191(1)(l) authorizes the board to promulgate administrative regulations establishing the qualifications a pharmacy technician is required to attain prior to practicing under the general supervision of a pharmacist. This administrative regulation establishes the qualifications required for a pharmacy technician to practice under the general supervision of a pharmacist, and establishes the scope of practice for a pharmacy technician.

Section 1. A person shall be recognized by the board as a certified pharmacy technician, if:

(1) He has successfully completed the National Certification Examination administered by the Pharmacy Technician Certification Board; and

(2) The certificate issued by the Pharmacy Technician Certification Board is current; or

(3) He has successfully completed the Nuclear Pharmacy Technician Training Program at the University of Tennessee.

Section 2. A certified pharmacy technician, subject to the supervision, as defined by KRS 315.010(25), of a pharmacist may perform the following functions:

(1) Certify for delivery unit dose mobile transport systems that have been refilled by another technician;

(2) Within a nuclear pharmacy, receive diagnostic orders; and

(3)(a) Initiate or receive a telephonic communication from a practitioner or practitioner's agent concerning refill authorization, after he clearly identifies himself as a certified pharmacy technician;

(b) If a practitioner or practitioner's agent communicates information that does not relate to the refill authorization:

1. A technician shall immediately inform the pharmacist; and

2. The pharmacist shall receive the communication.

Section 3. (1) A technician who has not been certified by the Pharmacy Technician Certification Board may perform the functions specified by Section 2 of this administrative regulation under the immediate supervision of a pharmacist.

(2) A function performed by a certified pharmacy technician or pharmacy technician shall be performed subject to the review of the pharmacist who directed the technician to perform the function.

(3) A pharmacist who directs a certified pharmacy technician or pharmacy technician to perform a function shall be responsible for the technician and the performance of the function.

DAVID L. JAQUITH, President

CHERYL L. LONDE-MOONEY, JD, Assistant Attorney General

APPROVED BY AGENCY: December 15, 1999

FILED WITH LRC: February 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 9:15 a.m. on March 28, 2000, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 2000 five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made

unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: All nuclear pharmacy technicians in the Commonwealth.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit as a result of the adoption of this administrative regulation since it will permit nuclear pharmacy technicians to be recognized as certified technicians after completion of a self-study and didactic training program that is relevant to the unique operations of a nuclear pharmacy.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed amended administrative regulation could continue to limit the potential usefulness of this administrative regulation in the operation of nuclear pharmacies.

(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:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons in each class are treated identically by this amended administrative regulation.

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KENTUCKY BOARD OF DENTISTRY
(Amendment)

201 KAR 8:006. Advertising of dental services.

RELATES TO: KRS 313.220

STATUTORY AUTHORITY: KRS 313.400, 313.410

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation prohibits dentists licensed in Kentucky from using false, misleading, or deceptive advertising. This administrative regulation sets forth the manner in which dentists license in Kentucky may advertise as specialists or as being especially qualified in any area of dentistry.

Section 1. A dentist who:

(1) Does not hold a specialist's license in a branch of dentistry recognized in KRS 313.400(1); and

(2) Holds himself out to the public as being especially qualified in any branch of dentistry by announcing through the press, sign, card, letterhead or printed matter, or any means of public advertising using the name of the specialty or by using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, shall not be deemed to have violated KRS 313.410 if the press, sign, card, letterhead, or printed matter, or any public advertising contains the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry" in print of a size equal to or greater than any other portion of the advertisement.

Section 2. A dentist who:

(1) Does not hold a specialist's license in a branch of dentistry recognized in KRS 313.400(1); and

(2) Holds himself out to the public as being especially qualified in any branch of dentistry by announcing through radio, television, or any other means of public address using the name of the specialty or by using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, shall not be deemed to have violated KRS 313.410 if the radio, television, or any other means of public address commences and ends with the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry".

Section 3. No licensed dentist shall:

(1) Hold himself out to the public as being a especially qualified in any area of dentistry not recognized in KRS 313.400(1) as a specialty; or

(2) Use the words "certified", "board certified", or "diplomate", unless the advertisement states that Kentucky law does not recognize the advertised field as an area of dentistry suitable for licensing as a dental specialty. [This administrative regulation sets forth the manner in which dentists licensed in Kentucky may advertise dental services.

Section 1. No licensed dentist shall hold himself out to the public as being especially qualified in any branch of dentistry by announcing through the press, sign, card, letterhead or printed matter, or any means of public advertising using such terms as "specialist," or inserting the name of the specialty, or using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, without first securing a specialist's license for same as provided in KRS Chapter 313 and these administrative regulations.

Section 2. A general dentist who advertises using words or phrases customarily used by a specialist shall not be deemed to have violated Section 1 of this administrative regulation if such advertising contains the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry" in print of a size equal to or greater than any other portion of the advertisement.

Section 3. A general dentist who advertises through radio, television, or any other means of public address and who uses words or phrases customarily used by a specialist shall not be deemed to have

violated Section 1 of this administrative regulation if such advertising commences and ends with the name of the general dentist immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry."

Section 4. Any advertisement for a dental [group] practice where more than one (1) dentist regularly provides dental services to the public shall contain the name of each dentist therein immediately followed by the phrase "general dentist" or "general dentistry" or "family dentist" or "family dentistry" or by the name of the specialty recognized by KRS 313.400(1) in which any member of the [group] practice is licensed.

Section 5. A dentist shall not use the name of any other dentist who:

(1) Had been previously associated with a dental practice by ownership interest; or

(2) Had been previously associated with a dental practice by practicing in that dental practice after one (1) year following the end of said dentist's ownership interest; or

(3) The end of said dentist's practicing in that dental practice, whichever is later.

Section 6. A dentist shall not advertising services in any manner which is false, misleading, or deceptive.

Section 7. Any dentist licensed in Kentucky may submit proposed advertising to the Kentucky Board of Dentistry for [prior] written approval prior to using the advertising.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the Board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: Approximately 2800.

(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: This regulation would have a negligible financial impact on the cost of doing business for dentist.

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: NA

1. First year: NA
2. Continuing costs or savings: NA
3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: NA
- (4) Assessment of anticipated effect on state and local revenues: NA
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual budget.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: NA
 - (b) Kentucky: NA
- (7) Assessment of alternative methods; reasons why alternatives were rejected: Must meet guidelines set forth by law.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Consumers would be better protected with more accurate advertising.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: Consumers would not have sufficient information to make wise health care choices.
 - (c) If detrimental effect would result, explain detrimental effect: NA
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: NA
 - (a) Necessity of proposed regulation if in conflict: NA
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

KENTUCKY BOARD OF DENTISTRY (Amendment)

201 KAR 8:130. X-rays by dental assistants.

RELATES TO: KRS 313.220

STATUTORY AUTHORITY: KRS 313.220

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation requires that all dental auxiliary personnel [assistants] taking x-rays must first complete a course in dental radiography safety as prescribed by the board, a practicum course in x-ray technique taught either by the employing dentist or course approval by the board, and be supervised by the dentist when taking x-rays.

Section 1. No dentist may delegate taking x-rays to dental auxiliary personnel unless the dentist:

- (1) Maintains written documentation that the dental auxiliary personnel taking the x-ray has previously completed a minimum of a six (6) hour course in dental radiography safety approved by the board;
- (2) Maintains written documentation that the dental auxiliary personnel taking the x-ray has previously completed a minimum of four (4) hours of instruction by the dentist in dental radiography technique while under the employment and supervision of the dentist in the office where the dentist practices dentistry, or maintains written documentation that the dental auxiliary personnel has completed a minimum of a four (4) hour course in radiography technique approved by the board; and
- (3) Continuously supervises and inspects such dental auxiliary personnel while taking radiographs.

Section 2. Licensed and registered dental hygienists are deemed to meet the requirements of this administrative regulation. [Dental assistants shall only take x-rays under supervision of a licensed dentist. The supervising dentist shall be held responsible to the board that such assistants shall become qualified for this function by first completing a prescribed course in dental radiography approved

by the board.]

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: 1500 auxiliary personnel.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: NA

(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:

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: NA

(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: NA

(b) Kentucky: NA

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

(8) Assessment of expected benefits: NA

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Consumers will be better protected by trained auxiliary personnel.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Consumers would not be protected by adequate auxiliary personnel.

(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: NA

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

**KENTUCKY BOARD OF DENTISTRY
(Amendment)**

201 KAR 8:220. Clinical examination.

RELATES TO: KRS 313.050, 313.060, 313.100

STATUTORY AUTHORITY: KRS 313.220

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth requirements of the clinical examination to obtain a license to practice dentistry, grade to be attained and permits the Board to dismiss a candidate for gross malperformance or misconduct.

Section 1. Definitions. (1) "Gross malperformance" means gross injury to the hard or soft tissue or gross failure to observe accepted dental principles as determined by the examiners.

(2) "Misconduct" means cheating on the examination which consists of either giving help on the examination to or receiving help on the examination from another individual; or disorderly conduct or harassment as defined by KRS 525.060 and 525.070.

Section 2. (1) Clinical examination. The requirements of the clinical examination shall be within the discretion of the board as to subject matter but these requirements shall be agreed upon one (1) year prior to the examination, and shall remain within the subjects contained in the regular curriculum of accredited dental schools.

(2) Successful completion of the clinical examination adopted for use by the Kentucky Board of Dentistry requires that a candidate successfully pass one (1) of the following examinations:

(a) The examination of the Southern Regional Testing Agency, Inc.;

(b) The examination of the Western Regional Testing Association; [or]

(c) The examination of the Northeast Regional Board;

(d) The examination of the Central Regional Testing Association. [The GORE examination offered through the Northeast Regional Board and the Central Regional Testing Association.]

(3) Regional testing agencies may conduct examinations in the Commonwealth of Kentucky only with the authorization of the Kentucky Board of Dentistry.

(4) A candidate may be dismissed during the course of the examination for gross malperformance or misconduct.

(5) A candidate who is dismissed from the examination for malperformance or misconduct shall have the right to appeal his dismissal to the Kentucky Board of Dentistry by filing a petition in writing stating his grounds for appeal before the next regularly scheduled meeting of the Kentucky Board of Dentistry. Thereafter, a majority vote by the board members present shall determine the issue.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: Approximately 2800 licensed dentists.

(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: NA

(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: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual budget.

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

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

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available because current regulations do not allow so.

(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 regulation will allow dentists flexibility to be licensed in Kentucky.

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

(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: NA

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

**KENTUCKY BOARD OF DENTISTRY
(Amendment)**

201 KAR 8:277. Written and clinical application grade requirements.

RELATES TO: KRS 313.270

STATUTORY AUTHORITY: KRS 313.270

NECESSITY, FUNCTION, AND CONFORMITY: Sets forth requirements and qualifications for the written examination prior to the candidates' participation in the clinical examination.

Section 1. The provisions of 201 KAR 8:180 and 201 KAR 8:185

shall be applicable to dental hygienists for the purpose of establishing the time of examination, and the grading of the examinations of all applicants for a license to practice dental hygiene, and other provisions of these rules as pertain to the procedures and conducting of examinations.

Section 2. (1) Written Examination. To successfully complete the written portion of the Kentucky Board of Dentistry's licensure examination, all applicants shall achieve a grade of at least seventy-five (75) percent on each section of the examination conducted by the Council of National Board of Dental Examiners.

(2) This requirement shall be satisfied prior to admission to the clinical portion of the Kentucky Board of Dentistry's licensure examination.

Section 3. Clinical Examination. (1) To successfully complete the clinical portion of the Kentucky Board of Dentistry's clinical examination, all applicants must achieve an overall average grade of at least seventy-five (75) percent on any of the following examinations:

(a) The examination of the Southern Regional Testing Agency, Inc.;

(b) The examination of the Western Regional Testing Association; [or]

(c) The examination of the Northeast Regional Board;

(d) The examination of the Central Regional Testing Association.
[The CORE examination offered through the Northeast Regional Board and the Central Regional Testing Association.]

(2) Regional testing agencies may conduct examinations within the Commonwealth of Kentucky only with the authorization of the Kentucky Board of Dentistry.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: Approximately 1500 licensed dental hygienists.

(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: NA

(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: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual budget.

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

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

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available because current regulations do not allow so.

(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 regulation will allow dental hygienists flexibility to be licensed in Kentucky.

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

(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: NA

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

KENTUCKY BOARD OF DENTISTRY (Amendment)

201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists.

RELATES TO: KRS 313.220(4)

STATUTORY AUTHORITY: KRS 313.220(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220(4) authorizes the Board of Dentistry to regulate the practice of dentistry in Kentucky. This administrative regulation is necessary to establish the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist.

Section 1. Definitions. (1) "Conscious sedation" means a minimally depressed level of consciousness:

(a) Produced by a pharmacological or nonpharmacological method; and

(b) In which the patient is able to independently and continuously:

1. Maintain an airway; and

2. Respond appropriately to physical stimulation and verbal command.

(2) "Deep sedation" means a controlled state of depressed consciousness produced by a pharmacological or nonpharmacological method accompanied by:

(a) Partial loss of protective reflexes; and

(b) Inability to respond purposefully to verbal command.

(3) "General anesthesia" means a controlled state of unconsciousness:

(a) Produced by a pharmacological or nonpharmacological method; and

(b) Accompanied by:

1. Partial or complete loss of protective reflexes; and

2. Inability to respond purposefully to physical stimulation or verbal command.

(4) "Parenteral" means a sedation technique in which a drug is:

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(a) Absorbed directly from the site of its administration into the cardiovascular system, effectively bypassing the gastrointestinal (GI) tract; and

(b) Normally administered by injection with a syringe.

Section 2. Authorization. (1) A dentist shall not use general anesthesia on an outpatient basis for a dental patient unless he:

(a) Applies for and receives an annual permit of authorization by the Kentucky Board of Dentistry; and

(b) Provides proof of completion of a course of study in advanced cardiac life support (ACLS) sponsored and approved by the American Heart Association within twenty-four (24) months previous to the filing of the application.

(2) To receive authorization, a dentist shall:

(a) Complete one (1) year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program as described in Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry; or

(b) Be:

1. A Diplomate of the American Board of Oral Surgery; or

2. Eligible for examination by the American Board of Oral Surgery.

(3) A permit shall not be needed if a dentist works in conjunction with a trained physician anesthesiologist licensed to practice medicine in Kentucky or a Certified Registered Nurse Anesthetist licensed in Kentucky, if that person:

(a) Is a member of the anesthesiology staff of an accredited hospital; and

(b) Remains on the premises of the dental facility or hospital until the patient regains consciousness.

(4) A facility where general anesthesia, deep sedation, or conscious sedation with a parenteral drug is employed shall meet board standards to insure that the protocol procedures, facilities, drugs, equipment, and personnel utilization are acceptable for safe and appropriate use. Board standards are established in:

(a) General Anesthesia and Deep Sedation Inspection List; and

(b) Conscious Sedation with Parenteral Drugs Inspection List.

(5) A dentist administering general anesthesia or deep sedation shall:

(a) Have completed a course in advanced cardiac life support (ACLS) through a course of study sponsored and approved by the American Heart Association within the past twenty-four (24) months; or

(b) Obtain six (6) hours of continuing education every two (2) years relating to anesthesia safety and emergency procedures.

(6) Staff assisting with the administration of general anesthesia or deep sedation shall have current certification in basic life support (BLS) through a course of study sponsored and approved by the:

(a) American Heart Association; or

(b) American Red Cross.

(7) Staff assisting with the administration of conscious sedation with a parenteral drug shall have current certification in basic life support (BLS) through a course of study sponsored and approved by the:

(a) American Heart Association; or

(b) American Red Cross.

(8) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and:

(b) Be in addition to other continuing education requirements of 201 KAR Chapter 8.

Section 3. Conscious Sedation with Parenteral Drugs. (1) To qualify to use a parenteral drug in conscious sedation, a dentist shall produce evidence that he:

(a) Qualifies under Section 2(2) of this administrative regulation for general anesthesia; or

(b) Has completed an approved course in conscious sedation with parenteral drugs in a program approved by the Kentucky Board of Dentistry, which includes:

1. Physical diagnosis and patient evaluation; and

2. Passing a course of didactic and clinical training:

a. Consistent with Part 2 of the ADA Guidelines for teaching the

Comprehensive Control of Pain and Anxiety in Dentistry; and

b. With documentation of having treated a minimum of twenty-five (25) cases; or

(c) Is a diplomat, board eligible, eligible for board examination in a specialty, or a graduate of an accredited general practice residency, if he can provide proof of training in the use of conscious sedation with a parenteral drug. The training shall be consistent with Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry.

(2) A dentist and staff administering or assisting with the administration of conscious sedation with a parenteral drug shall have current certification in Basic Life Support (BLS) through a course of study sponsored and approved by the:

(a) American Heart Association; or

(b) American Red Cross.

(3) A dentist administering conscious sedation with a parenteral drug shall:

(a) Have completed a course in Advanced Cardiac Life Support (ACLS) within the past twenty-four (24) months; or

(b) Obtain six (6) hours of continuing education every two (2) years specifically relating to anesthesia safety and emergency procedures.

(4) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and:

(b) Be in addition to other continuing education requirements of 201 KAR Chapter 8.

Section 4. Inspection. (1) If general anesthesia, deep sedation, or conscious sedation with a parenteral drug is employed, the board may conduct an unannounced on-site inspection of a facility to determine that the protocol, procedures, facility, drug, equipment, and personnel utilization meet board standards as established in the:

(a) General Anesthesia and Deep Sedation Inspection List; and

(b) Conscious Sedation with Parenteral Drugs Inspection List.

(2) The inspection team shall:

(a) Be determined by the board; and

(b) Reflect the principles of peer review.

Section 5. Report of Injury or Mortality. A licensee engaged in the practice of dentistry in the state of Kentucky shall submit a complete report within thirty (30) days to the board of a mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, or conscious sedation with a parenteral drug.

Section 6. Personnel. The following shall be present during the administration of general anesthesia or deep sedation:

(1) The operating dentist to direct the general anesthesia or deep sedation;

(2) A person to observe and monitor the patient; and

(3) An assistant to the operating dentist.

Section 7. Permit Renewal and Annual Fee. (1) A permit shall be renewed annually unless the dentist:

(a) Fails to obtain the:

1. Proper certification in ACLS or BLS; or

2. Required hours of continuing education; and

(b) Does not utilize general anesthesia, deep sedation, or conscious sedation with a parenteral drug in a facility that meets board standards.

(2) The annual fee of ~~fifty (50)~~ ~~fifteen (15)~~ dollars shall be paid for renewal of a permit at the time of license renewal.

Section 8. Nitrous Oxide. (1) To qualify to use nitrous oxide in conscious sedation, a dentist shall complete a university based course approved by the Kentucky Board of Dentistry.

(2) Equipment used in the administration of nitrous oxide shall have functional safe guard measures that:

(a) Limit the minimum delivered oxygen concentration to thirty (30)

percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Insure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A dentist shall not need a permit to administer nitrous oxide.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for General Anesthesia and/or conscious sedation permit", (July, 1995 Edition), Kentucky Board of Dentistry;

(b) "ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part 2", (1987 Edition), American Dental Association;

(c) "General Anesthesia and Deep Sedation Inspection List", (1997 Edition), Kentucky Board of Dentistry; and

(d) "Conscious Sedation with Parenteral Drugs Inspection List", (1997 Edition), Kentucky Board of Dentistry.

(2) This material may be inspected, copied, or obtained at Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: 166 dentists who hold anesthesia permits.

(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: NA

(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 fee regulation will have a negligible financial impact on the cost of doing business for dentists as it increases fees for a small group that only administer anesthesia.

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body: Will provide agency to do inspections of facilities that dentists administer anesthesia.

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(4) Assessment of anticipated effect on state and local revenues: NA

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

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

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

(b) Kentucky: NA

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

(8) Assessment of expected benefits: NA

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: NA

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

(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: NA

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

KENTUCKY BOARD OF NURSING (Amendment)

201 KAR 20:370. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination or endorsement, "Application for Licensure";

(b) For RN Renewal, "RN Biennial Licensure Renewal Application";

(c) For LPN Renewal, "LPN Biennial Licensure Renewal Application";

(d) For RN or LPN reinstatement, "Application for Reinstatement";

(e) For RN or LPN change of status:

1. "Application for Change of Licensure Status (Inactive to Active)"; or

2. "Application for Change of Licensure Status (Active to Inactive)";

(f) For registration as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky";

(g) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application"; or

(h) For reinstatement as an advanced registered nurse practitioner, "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner";

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(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) ~~Not have a disciplinary action pending by the board or an agreed order or decision presently in effect for a violation of KRS Chapter 314;~~

(6) Have paid all monies due to the board;

(6) [(7)] Submit a copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;

(7) [(8)] Submit additional information as required by the board in an administrative regulation;

(8) [(9)] Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Inactive licensure status established by 201 KAR 20:095; or

(f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056;

(9) [(10)] If not a citizen of the United States, submit proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) [(11)] Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office; and

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office.

Section 4. (1) Pursuant to KRS 314.091(1)(b), a conviction of a felony or misdemeanor shall be considered as bearing directly on the qualifications or ability of an applicant to practice nursing if the conviction involved dishonesty, substance abuse, sexual offenses, breach of trust, danger to the public safety, or physical harm or endangerment. [licensure:

(a) ~~Committed the felony within five (5) years of the date of filing the application; and~~

(b) ~~Was convicted of a felony under:~~

1. ~~One (1) of the following KRS Chapters:~~

a. ~~KRS Chapter 189A (driving under the influence);~~

b. ~~KRS Chapter 218A (controlled substances);~~

c. ~~KRS Chapter 507 (criminal homicide);~~

d. ~~KRS Chapter 508 (assault and related offenses);~~

e. ~~KRS Chapter 509 (kidnapping and related offenses);~~

f. ~~KRS Chapter 510 (sexual offenses);~~

g. ~~KRS Chapter 511 (burglary and related offenses);~~

h. ~~KRS Chapter 512 (criminal damage to property);~~

i. ~~KRS Chapter 513 (arson and related offenses);~~

j. ~~KRS Chapter 514 (theft and related offenses);~~

k. ~~KRS Chapter 515 (robbery);~~

l. ~~KRS Chapter 516 (forgery and related offenses);~~

m. ~~KRS Chapter 521 (bribery and corrupt influences);~~

n. ~~KRS Chapter 523 (perjury and related offenses);~~

o. ~~KRS Chapter 525 (riot, disorderly conduct and related offenses);~~

p. ~~KRS Chapter 527 (offenses related to firearms and weapons);~~

q. ~~KRS Chapter 528 (gambling);~~

r. ~~KRS Chapter 529 (prostitution offenses);~~

s. ~~KRS Chapter 531 (pornography); or~~

t. ~~KRS Chapter 506 (offenses of attempt, conspiracy, or complicity to commit an offense specified in this paragraph); or~~

2. ~~A comparable law in another jurisdiction;~~

(2) ~~A notice to deny licensure shall be issued to an applicant who has been convicted of a felony specified in subsection (1) of this section;~~

(3)(a) ~~An applicant for licensure by examination or endorsement shall report a conviction for a crime that is:~~

1. ~~Specified in subsection (1) of this section for which the applicant was convicted prior to the time period specified in subsection (1) of this section; or~~

2. ~~Not specified in subsection (1) of this section;~~

(b) ~~The board shall review a conviction reported pursuant to paragraph (a) of this subsection on an individual basis to see if the requirements of KRS 314.091 are met;]~~

(2) A felony or misdemeanor conviction shall be reviewed to determine whether:

(a) The application shall be processed with no further action;

(b) The application shall be processed only after the applicant has entered into an agreed order with the board with terms and conditions as agreed to by the parties; or

(c) A notice to deny licensure shall be issued. A notice to deny licensure shall inform the applicant that he may request a hearing. The request shall be in writing.

(3) A complaint received by the board alleging a violation of KRS 314.091(1) shall be handled in the same manner as set forth in subsection 2 of this section.

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

(a) "Application for Licensure", 3/98, Kentucky Board of Nursing;

(b) "RN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;

(c) "LPN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;

(d) "Application for Reinstatement", 1/97, Kentucky Board of Nursing;

(e) "Application for Change of Licensure Status (Inactive to Active)", 3/97, Kentucky Board of Nursing;

(f) "Application for Change of Licensure Status (Active to Inactive)", 2/97, Kentucky Board of Nursing;

(g) "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky", 6/93, Kentucky Board of Nursing;

(h) "ARNP Registration Renewal Application", 3/98, Kentucky Board of Nursing; and

(i) "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner", 3/98, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m.

JUNE BELL, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 10, 1999

FILED WITH LRC: February 8, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 21, 2000, at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2000, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or writ-

ten comments on the proposed administrative regulation to the contract person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7009, Fax: (502) 329-8206.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

- (1) Type and number of entities affected: Unknown
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments 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 comments were received.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: No change from current procedure.
 2. Second and subsequent years: No change from current procedure.
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings
 1. First year: N/A
 2. Continuing costs or savings: N/A
 3. Additional factors increasing or decreasing costs: N/A
 - (b) Reporting and paperwork requirements: No change from current procedure.
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds.
 - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: No comments were received.
 - (b) Kentucky: No comments were received.
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: N/A
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: N/A
 - (c) If detrimental effect would result, explain detrimental effect: N/A
 - (9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: None
 - (a) Necessity of proposed regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? Tiering was not applied as the changes affect all applicants in the same manner.

BOARD OF PHYSICAL THERAPY (Amendment)

201 KAR 22:135. Fees.

RELATES TO: KRS 327.040(12), 327.050(2), (8), 327.075(1), 327.080(1)
 STATUTORY AUTHORITY: KRS 327.040(12), 327.050(2), (8), 327.075(1)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(12) authorizes the board to establish reasonable fees for the

certification, renewal and endorsement of physical therapists' assistants. KRS 327.050(2) requires the board to establish a nonrefundable application fee not to exceed \$250 for licensure as a physical therapist and requires an applicant to pay an examination fee. KRS 327.050(8) requires the board to establish a biennial renewal fee not to exceed \$100 for a license. KRS 327.075(1) requires the board to establish a reinstatement fee not to exceed twenty-five (25) dollars for a lapsed license or certificate. This administrative regulation establishes the fees required to apply for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification, for examination, reinstatement, renewal or reexamination.

- Section 1. Payment of Fees. (1) Except as provided in subsection (2) of this section, an application fee shall be:
- (a) Made payable as required by KRS 327.080(1); and
 - (b) Paid by:
 1. Cashier's check;
 2. Certified check; or
 3. Money order.
 - (2) A renewal application fee shall be paid:
 - (a) As required by subsection (1) of this section; or
 - (b) By personal check.

Section 2. Fees. The fee for:

- (1) Physical therapist licensure and for physical therapist's assistant certification application shall be \$170;
- (2) Reinstatement application shall be \$125;
- (3) Renewal application shall be \$100;
- (4) Physical therapist examination shall be \$285 [245]; and
- (5) Physical therapist's assistant examination shall be \$285 [230];
- (6) Physical therapist reexamination shall be \$295 [255]; and
- (7) Physical therapist's assistant reexamination shall be \$295 [240].

TOM A. PENNINGTON, Chairman

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: January 13, 2000

FILED WITH LRC: February 15, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2000 at 9 a.m. (EST) at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Brinly, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 327-8497. Fax: (502) 423-0934.

REGULATORY IMPACT ANALYSIS

Contact Person: Nancy Brinly

- (1) Type and number of entities affected: Approximately 275 examination applicants per 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: None anticipated. Application of fee increase will be universal.
 - (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 were received.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

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1. First year following implementation: Increased examination cost.
2. Second and subsequent years: Fees amount will be ongoing.
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
2. Continuing costs or savings: Revenue and costs will continue.
3. Additional factors increasing or decreasing costs: None anticipated.
 - (b) Reporting and paperwork requirements:
 - (4) Assessment of anticipated effect on state and local revenue: Not applicable.
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Applicants will pay the increased fee.
 - (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 recognized.
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented on Kentucky: No public health or environmental effects.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.
 - (c) If detrimental effect would result, explain detrimental effect: Not applicable.
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None 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: These amendments are required to provide funding for the National Physical Therapy Exam. Increased fees will pay for a new analysis of physical therapy practice.
 - (11) TIERING: Is tiering applied? No. All physical therapists and physical therapist's assistant are treated uniformly by the Board of Physical Therapy.

KENTUCKY BOARD OF PODIATRY (Amendment)

201 KAR 25:031. Continuing education.

RELATES TO: KRS 311.450(2)

STATUTORY AUTHORITY: KRS 311.410(4), 311.450(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2)

requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete fifteen (15) hours of continuing education relating to the practice of podiatry.

(2) The fifteen (15) hours required pursuant to subsection (1) of this section shall be taken from those programs approved or sponsored by the board.

(3) Two (2) of the fifteen (15) hours required pursuant to subsection (1) of this section shall include a course on acquired immunodeficiency syndrome, in accordance with Section 3(4) of this administrative regulation.

(4) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

Section 2. (1) A continuing education hour shall be earned by attendance at:

- (a) A professional seminar;
- (b) An accredited school of podiatry continuing education program; or

(c) Another program approved by the board.

(2) Prior approval shall be secured from the board for certification of a continuing education program, other than a program required by Section 3(4) [(5)] of this administrative regulation.

(3) A sponsor shall submit a written letter of application to the board to request approval of a continuing education program. The letter shall indicate that the program has been approved, or is under consideration for approval, by the American Podiatric Medical Association's Council on Podiatric Medical Education.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;

(b) Be kept for three (3) years; and

(c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

(3) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.

(4) Each licensed podiatrist requesting renewal of his license shall submit to the Kentucky Board of Podiatry that he has successfully completed two (2) hours of continuing education which:

(a) Complies with the requirements of KRS 214.610(1); and

(b) Is approved by the Kentucky Cabinet for Health Services pursuant to 902 KAR 2:160 as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome.

Section 4. (1) On application, the board shall consider granting a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member;

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding the license; and

(b) Accompanied by a document verifying the illness or disability signed by the licensee's personal physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 5. Inactive Status. (1) Licensees may apply for inactive status.

(2) Licensees granted inactive status shall be relieved of their obligation to meet the requirements for continuing education set forth in this administrative regulation.

(3) A person on inactive status is permitted to use the term "podiatrist" but the licensee shall not be permitted to engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) Podiatrists seeking relicensure from inactive to active status must fulfill the following requirements:

(a) If the podiatrist has been inactive for no more than five (5) consecutive years, he must:

1. Provide written notice to the board requesting reactivation to

active status by filing a renewal form and requesting in writing that the license be made active;

2. Have completed fifteen (15) hours of board approved continuing education requirements within a period of six (6) months preceding the request for active status, including the course on acquired immunodeficiency syndrome required by Section 1(3) of this administrative regulation; and

3. Pay the renewal fee and a reactivation fee of \$100.

(b) If a podiatrist has been in inactive status for more than five (5) consecutive years, he must:

1. File a completed application for examination in accordance with 201 KAR 25:011 and pay the required fee;

2. Be approved by the board to take the examination; and

3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

JOSEPH LEONE, Chairman

JAMES J. GRAW, Assistant Attorney General

APPROVED BY AGENCY: December 11, 1999

FILED WITH LRC: February 14, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of March, 2000, at 10 a.m. in Capitol Building, 700 Capitol Avenue, Room 114, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2000, 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. 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: Stuart A. Naulty, DPM, 906B S. 12th Street, Murray, Kentucky 42071-2947, Phone (270) 759-0007, FAX (270) 753-0684.

REGULATORY IMPACT ANALYSIS

Agency Contact: Stuart A. Naulty, DPM

(1) Type and number of entities affected: Approximately 90 licensed podiatrists 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings 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: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was amended to update the education, experience and continuing education requirements for licensed podiatrists. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

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

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

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed podiatrists are treated uniformly under the law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Amendment)

405 KAR 20:060. Steep slopes.

RELATES TO: KRS 350.090, 350.093, 350.100, 350.405, 350.410, 350.445, 350.450, 350.465, 30 CFR Parts 730-733, 735, 785.15, 785.16, 816.107, 917, 30 USC 1253, 1255, 1257, 1258, 1265(d)

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.093, 350.100, 350.445, 350.450, 350.465, 30 CFR parts 730-733, 735, 785.15, 785.16, 816.107, 917, 30 USC 1253, 1255, 1257, 1258, 1265(d), 1265(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes special performance standards and limited variance procedures for operations conducted on steep slopes. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards, specifically including such standards for operations conducted on steep slopes. This administrative regulation sets forth special performance standards and limited variance procedures for operations conducted on steep slopes.]

Section 1. Applicability. (1) [Any] Surface coal mining and reclamation operations on steep slopes shall meet the requirements of this administrative regulation.

(2) The standards of this administrative regulation shall [do] not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 405 KAR 20:050.

Section 2. Performance Standards. (1) Surface coal mining and reclamation operations subject to this administrative regulation shall comply with requirements of this section and all other requirements of

405 KAR Chapters 7 through 24, except to the extent a variance is approved under Section 3 of this administrative regulation.

(2)(a) The permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

1. Spoil;
2. Waste materials, including waste mineral matter;
3. Debris, including that from clearing and grubbing of haul road construction; and
4. Abandoned or disabled equipment.

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, ~~if [so long as]~~ the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapters 16 and 18 and the material is moved and placed in a controlled manner.

(3) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of 405 KAR Chapters 16 and 18, with respect to backfilling and grading, including ~~[but not limited to]~~ the return of the site to the approximate original contour. The permittee shall ~~[must]~~ demonstrate to the cabinet, using standard geotechnical analyses, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least one and three-tenths (1.3).

(4) Land above the highwall shall not be disturbed unless the cabinet finds that the disturbance facilitates compliance with the requirements of 405 KAR Chapters 16 through 20, provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate ~~[said]~~ compliance.

(5) Material in excess of that required by the grading and backfilling provisions of subsection (3) of this section shall be disposed of in accordance with the requirements of 405 KAR 16:130 or 405 KAR 18:130.

(6) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area as required in subsection 3 of this section. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

Section 3. Limited variances for nonmountaintop removal, steep slope sites. Surface coal mining operations may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The cabinet grants the variance and the operation is conducted and reclaimed in accordance with the plan approved under 405 KAR 8:050, Section 6.

(2)(a) After reclamation, the lands to be affected by the variance within the permit area shall be suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities);

(b) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use;

(c) The alternative postmining land use requirements of 405 KAR 16:210, Section 4 are met; and

(d) Federal, state, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(3) The applicant has demonstrated in the permit application that the watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed shall ~~[will]~~ be deemed improved only if:

(a) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of ground or surface ~~[such]~~ water, or flood hazards from precipitation events or thaws within the watershed containing the permit area will be reduced by decreasing the peak flow discharge, or there will be an

increase in stream flow during times of the year when streams within the watershed are normally at low flow or dry and ~~the~~ ~~[such-an]~~ increase in stream flow is determined by the cabinet to be beneficial to public or private users or to the ecology of ~~the~~ ~~[such]~~ streams; ~~[and]~~

(b) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or groundwater; and

(c) The cabinet has considered any agency comments under subsection (2) of this section regarding watershed improvement.

(4) The proposed use is designed and certified by a qualified, registered, professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(5) The surface landowner of the permit area has knowingly requested, in writing in the permit application, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities).

(6) All applicable requirements of KRS Chapter 350 and 450 KAR Chapters 7 through 24, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24 is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: January 26, 2000

FILED WITH LRC: January 27, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for March 30, 2000, at 10 a.m. (eastern time) in Room D-16 (Training Room) of the Department for Surface Mining Reclamation and Enforcement, at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by March 23, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by 4:30 p.m. on March 30, 2000, if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays days prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Telephone: (502) 564-6940, fax: (502) 564-5698.

REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

This administrative regulation responds to the federal condition imposed upon Kentucky's regulatory program by 30 CFR 917.16(d)(5). It amends the criteria for obtaining a variance from the requirement to return a nonmountaintop removal mined area on steep slopes to its approximate original contour. It requires that any potential adverse effects on existing or planned uses of surface or

ground water be considered in demonstrating that the watershed will be improved by the proposed operations, which is necessary to obtain the variance. It also requires that the cabinet consider any comments regarding watershed improvement that are submitted by interested federal, state or local agencies. This amendment also makes minor language changes to comply with the formatting and drafting requirements of KRS Chapter 13A.

(1) Type and number of entities affected: This amendment will affect only those entities who seek a variance from the requirement to restore disturbed lands to their approximate original contour on nonmountaintop removal operations on steep slopes, under 405 KAR 20:060 Section 3.

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

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

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

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

1. First year following implementation: Applicants for a variance under this administrative regulation will be required to evaluate any potential adverse effects of the proposed operations on existing and planned uses of surface or ground water, in demonstrating that the watershed will be improved by the operations. Because gathering of water data and evaluation of impacts on water supplies are already required in other parts of the permit application, this requirement is not expected to cause a significant increase in compliance, reporting and paperwork requirements and associated costs.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue needed.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation may affect the post-mining land uses implemented at some coal mining operations on steep slopes in the eastern Kentucky coal fields. No area wide economic impacts are anticipated. Development of a particular industrial, commercial, residential, or public land use at a particular location will be foregone if a requested variance from restoration of approximate original contour must be denied because adverse effects on existing or planned water uses precludes a determination that the watershed will be improved.

(b) Kentucky: No economic impacts are anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to promulgation of the administrative regulation were considered, since the amendment is required by federal regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Potential adverse effects on existing and planned water uses will receive additional consideration in applications for variances from restoration of approximate original contour.

(b) State whether a detrimental effect on the environment and public health would result if not implemented: None would result.

(c) If detrimental effect would result, explain detrimental effect:

No detrimental effect.

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

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

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

(10) Any additional information or comments: No additional information or comments.

(11) TIERING: Is tiering applied? No. Tiering is not used in this amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24 that seek a variance under this administrative regulation from restoration of approximate original contour

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 785.15, 785.16, 816.107, 917.16(d)(5).

2. State compliance standards. For nonmountaintop removal operations on steep slopes, 405 KAR 20:060, Section 3 allows a variance from the requirement to restore the disturbed lands to their approximate original contour, if several criteria are met. One criterion is that the applicant demonstrate in the permit application that the watershed will be improved by the operations, when compared with the condition of the watershed before mining, or when compared with the condition of the watershed if the approximate original contour were restored. The watershed will be deemed improved only if certain standards are met. This amendment pertains only to these standards for determining watershed improvement. This amendment responds to the federal rule at 30 CFR 917.16(d)(5) that Kentucky's regulatory program be amended regarding the standards for watershed improvement. The standards in Section 3(3)(a) pertain to reduced pollutant discharges, reduced flood hazards, and increased streamflows during times of low flow. 30 CFR 917.16(d)(5) does not require any changes to the standards in this paragraph, and only minor language changes have been made. The standards in Section 3(3)(b) pertain to seasonal variations in the total volume of flow from the proposed permit area. This paragraph previously prohibited variations that adversely affect the ecology of any surface or ground water. This amendment revises this paragraph to prohibit variations that adversely affect the ecology of any surface water or any existing or planned use of surface or ground water. As amended, this provision is identical to its federal counterpart. The standard in Section 3(3)(c) is new. It requires that, in making a determination that the watershed will be improved, the cabinet has considered any comments from federal, state, or local agencies that address the issue of watershed improvement.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 917.16(d)(5) requires that Kentucky's administrative regulations be amended for consistency with the federal requirements at 30 CFR 785.16(a)(3)(ii) and (iii) regarding watershed improvement. Specifically, it requires that: By January 30, 1991, Kentucky shall submit a proposed amendment to 405 KAR 20:060 Section 3(3)(b) or otherwise propose to amend its program to clarify that the total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and to require the appropriate state environmental agency to approve the plan. 30 CFR 785.16(a)(3)(ii) requires that the total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water. 30 CFR 785.16(a)(3)(iii) requires that the appropriate State environmental agency approves the plan.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes the requirements necessitated by the federal mandate, although the requirements are, in part, different from the language of the federal mandate. 405 KAR 20:060 Section 3(3)(b), as amended, is identical to 30 CFR 785.16(a)(3)(ii). However, 405

KAR 20:060 Section 3(3)(c) differs from 30 CFR 785.16(a)(3)(iii).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not include the language of 30 CFR 785.16(a)(3)(iii), that "the appropriate State environmental agency approves the plan." This federal language is indefinite regarding the identity of the agency and regarding what "plan" must be approved, and therefore would not comply with the drafting rules of KRS 13A.222(4)(a). However, in Kentucky's program this language is simply unnecessary. This cabinet is the agency with statewide environmental responsibilities in Kentucky. Further, in addition to issuing (approving) the mining permit, under 405 KAR 20:060 Section 3(1) the cabinet must grant the variance from the requirement to restore the approximate original contour, and the cabinet must make the various determinations that are necessary for the variance. These include approval of the backfilling and grading plans under Section 2(3); the determination under Section 3(2)(a) that after reclamation the lands to be affected by the variance will be suitable for an industrial, commercial, residential, or public use; the determination under Section 3(2)(b) that the potential use is shown to constitute an equal or better economic or public use; the determination under Section 3(2)(c) that the alternative postmining land use requirements of 405 KAR 16:210 Section 4 are met; and the determination under Section 3(3) that the watershed will be improved. Whatever plan approval is contemplated under 30 CFR 785.16(a)(3)(iii), it is accomplished by the cabinet under the provisions summarized above. Additionally, new Section 3(3)(c) insures that the cabinet, in making its determination on watershed improvement, will take into consideration any comments by interested agencies.

**TRANSPORTATION CABINET
Department of Highways
Division of Contract Procurement
(Amendment)**

603 KAR 2:015. Prequalification for construction; certificate of eligibility; and contract claims dispute.

RELATES TO: KRS 45A.245, 176.090-176.110, 176.130 to 176.220

STATUTORY AUTHORITY: KRS 174.080, 176.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.140 authorizes the Department of Highways to determine the eligibility of bidders for construction contracts with the department. This administrative regulation is promulgated to provide a method by which the determination shall be made. This administrative regulation also establishes the hearing procedures for a contract claims dispute and denial, revocation, or limitation of certification.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of Highways.

(2) "Cabinet" means the Transportation Cabinet.

(3) "Department" means the Department of Highways.

(4) "Division" means the Division of Construction.

(5) "Concurrence" means the agreement with the entire report and recommendation of the hearing examiner.

(6) "Dissent" means disagreement with a part or portions of the report and recommendation of the hearing examiner.

(7) "Contract" means a competitively bid contract between the contractor and the department pursuant to KRS Chapter 45A and 176.090 to 176.110.

(8) "Contractor" means the person, corporation, partnership or joint venture which enters into a contract with the department for highway maintenance or construction.

(9) "Maximum eligibility amount" means the maximum amount of uncompleted prime contract work permitted at any one (1) time.

Section 2. Certificate of Eligibility. (1)(a) A contractor bidding on a construction or maintenance project or accepting a subcontract on a construction or maintenance project of the Transportation Cabinet, Department of Highways, shall be prequalified and possess a certificate of eligibility issued by the department to bid on construction

projects.

(b) The certificate shall state the maximum eligibility amount and types of work for which the contractor is qualified.

(c) The department may waive this requirement on a project not specifically involving the construction or maintenance of a public road in connection with the letting of a contract if the requirement is not mandated by KRS 176.130. The waiver shall be contained in the notice to contractors and the bid proposal for the project.

(2) The Commissioner of Highways shall appoint a construction prequalification committee composed of department employees to review each application and make a recommendation to the State Highway Engineer concerning the eligibility of a contractor to bid on a department construction or maintenance contract.

Section 3. Application for Certificate of Eligibility. A contractor desiring to procure a certificate shall submit, on the application and financial statement form TC-14-1, "Application for Certificate of Eligibility", December 1999 [September-1995] edition, provided by the department, information relating to the following:

(1) Ability to perform the types of work for which eligibility is requested.

(2) Construction experience resumes of the principal officers and key personnel of the contractor.

(3) Description of plant and equipment.

(4) Balance sheet and financial statement prepared as of the close of the last fiscal year or to reflect the current financial status of a newly established contractor.

(a) The financial statement of an applicant desiring eligibility in excess of \$1,000,000 shall be audited and attested by an independent public accountant or certified public accountant who holds a valid registration card from the Kentucky State Board of Accountancy or a registration card in the state in which the principal office of the contractor is located. The audit shall be made in accordance with the generally accepted auditing standards adopted by the membership of the American Institute of Certified Public Accountants. Standard audit forms and procedures shall conform with the institute's recommendations for the audit program of contractors. The accountant shall also comply with the specific instructions relative to the presentation of supporting detail requested by the department to determine the amount of net current assets available.

(b) The financial statement of an applicant desiring eligibility of \$1,000,000 or less shall be signed by the person preparing the statement and by a principal officer of the contractor.

(5) A "Certificate of Authority" if required by KRS 176.150(4).

Section 4. Confidentiality of Financial Information. In order to comply with KRS 61.878(1)(c) and KRS 176.210 the department shall not make available to the public the application information required in Section 3(3) and (4) of this administrative regulation.

Section 5. Method of Computing Maximum Eligibility Amount.

(1)(a) The allowable net current assets as determined from the financial statement plus the cash surrender value, less loans, of life insurance on which the applicant is the beneficiary (exclude all policies with other beneficiaries) shall be multiplied by a factor of twelve (12) to establish the net current assets factor.

(b) The book value of owned equipment shall be multiplied by a factor of six (6) to establish the equipment factor.

(c) The equipment factor shall be added to the net current assets factor to determine the maximum capacity factor of the contractor.

(2) The contractor's percentage rating shall be established by the department by evaluating the contractor's organization and experience, plant and equipment and performance in accordance with the following maximum percentages:

(a) Organization and experience - twenty (20) percent;

(b) Plant and equipment - thirty (30) percent;

(c) Performance - fifty (50) percent.

(3)(a) The maximum eligibility amount shall be determined by multiplying the contractor's percentage rating and the maximum capacity factor.

(b) A contractor's current eligibility amount shall be the net difference between the contractor's maximum eligibility amount as

shown on the certificate of eligibility issued by the department and the total value of uncompleted prime contract work charged to the contractor regardless of its location and with whom it may be contracted.

Section 6. Issuance of Certificate of Eligibility. (1)(a) The Construction Prequalification Committee shall review each application for a certificate of eligibility and make a recommendation of eligibility to the State Highway Engineer.

(b) The State Highway Engineer shall issue a determination of eligibility within thirty (30) days after receipt of the application unless the application is deferred as provided in Section 7(3) of this administrative regulation.

(c) Upon receiving a separate written request from a contractor not prequalified with the department indicating its intent to bid on a specific federal-aid project which has been advertised for a bid opening within the thirty (30) day period, the department shall review the application and make a determination of eligibility within fifteen (15) calendar days.

(2) A certificate of eligibility shall terminate 120 days after the end of the applicant's fiscal year unless the certificate is suspended or revoked prior to that time. Ninety (90) days of this period is to permit the applicant to file a new application in accordance with Section 3 of this administrative regulation, thirty (30) days is for the department's review of the application and, if approved, the issuance of the new certificate of eligibility.

(3) The certificate of eligibility in effect as of the bid opening date shall constitute the basis for determining the eligibility of a bidder.

(4) An applicant may, in regard to the department's decision on its application:

(a) Request reconsideration of the department's decision in accordance with Section 7 of this administrative regulation; or

(b) Appeal the department's decision in accordance with Section 10 of this administrative regulation.

Section 7. Reconsideration of Decisions of Construction Prequalification Committee. (1)(a) An applicant may at any time request reconsideration of an application if the applicant is denied a certificate of eligibility or disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing. An applicant may also request reconsideration of a department decision to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount if the request is submitted in writing within ten (10) days after receipt of the notice of the department's action.

(b) A request for reconsideration shall clearly state the basis of the request and be supported by information and evidence which indicates why a certificate of eligibility should be issued or why the certificate of eligibility should be amended.

(c) The Construction Prequalification Committee shall review the request, may contact the applicant for clarification or expansion of the submitted information, and shall make recommendation to the State Highway Engineer.

(d) The Department of Highways shall notify the applicant of its determination within thirty (30) days after receipt of the request for reconsideration.

(e) If the Department of Highways does not concur with the reconsideration request of the applicant, the applicant shall be notified of his right to an administrative hearing pursuant to Section 10 of this administrative regulation.

(2) An applicant denied a certificate of eligibility may submit a new application if factors constituting the basis for the issuance of a certificate of eligibility warrant reconsideration. The department shall consider the new application and notify the applicant of the action taken within thirty (30) days after receipt of the application.

(3)(a) An application which is deferred by the department until the applicant settles outstanding debt to the Commonwealth, completes a project, or satisfies prior concerns about work performance on a project shall remain in the possession of the department until the time that the reason for deferral is resolved to the satisfaction of the department.

(b) The department shall then take action on the deferred application to issue or deny a certificate of eligibility.

(c) The applicant submitting an application, which is deferred, shall be notified of the deferral within ten (10) days after action is taken by the department to defer the application. The applicant shall be notified pursuant to Section 10 of this administrative regulation of his right to an administrative hearing regarding the deferral.

(4) An interim application may be submitted if there has been a substantial increase in the net current assets of the applicant and the applicant wishes to apply for an increase in the maximum eligibility shown on the certificate of eligibility. The interim application shall contain a financial statement certified in the same manner as statements prepared as of the close of the fiscal year. The department shall review the interim application and notify the applicant of its determination within thirty (30) days after receipt of the application.

(5) A certificate holder, upon receipt of a certified mail request from the department, shall submit an interim financial statement or current information relating to the applicant's organization, equipment and work status. The information requested shall be submitted within thirty (30) days after receipt of the request. Failure to provide the information requested shall constitute a basis for the suspension or revocation of a certificate of eligibility.

(6) An applicant may request an administrative hearing if the applicant is denied a certificate of eligibility, his application is deferred, or the applicant disagrees with the maximum eligibility amount or the types of work set forth in its certificate of eligibility by notifying the department in writing within ten (10) days after receipt of its denial or certificate of eligibility. The department shall hold an administrative hearing pursuant to the provisions of Section 10 of this administrative regulation.

Section 8. Revocation of Certificate of Eligibility or Reduction of Maximum Eligibility Amount. (1) Upon receipt of information or evidence that a holder of a certificate of eligibility has failed to perform satisfactorily or adhere to the laws, administrative regulations, or specifications applicable to a contract or subcontract, the department may take action to suspend or revoke the certificate of eligibility or to reduce the maximum eligibility amount.

(2) A notice to the certificate holder, setting forth the grounds on which the action is proposed, shall be sent by certified mail.

(3) The proposed action shall become final unless the certificate holder submits a written request for a reconsideration pursuant to Section 7 of this administrative regulation or an administrative hearing within ten (10) days after receipt of the notice.

(4) If the certificate holder requests an administrative hearing, the department shall hold this hearing in accordance with the provisions of Section 10 of this administrative regulation.

Section 9. Administrative Claims Process. (1) The cabinet shall not consider a claim for extra work as defined in the edition of the standard specifications for road and bridge construction applicable to the contract between the cabinet and the contractor unless the contractor has submitted form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition, to the resident engineer before beginning the disputed work.

(2) Any other claim not referenced in subsection (1) of this section that a contractor shall possess against the cabinet for compensation shall be submitted in writing on form TC 63-32, "Notice of Changed Condition/Disagreement", to the resident engineer within ten (10) days of the date of which the contractor knew or should have known of the existence of said claim. Any claim presented after said ten (10) days shall not be considered for payment by the cabinet. After receipt of TC 63-32, "Notice of Changed Condition/Disagreement", the cabinet shall respond to the contractor with form TC 63-33, "Acknowledgement of Notice of Changed Condition/Disagreement".

(3) If a contractor has a contract claim or requests relief from the cabinet, the contractor shall exhaust the administrative process within the cabinet as set forth below prior to requesting an administrative hearing.

(a)1. For claims involving extra work, the contractor shall submit his claim in writing, setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than thirty (30) days after receipt of the

"Final Inspection and Formal Acceptance Report of Completed Construction", Form TC 63-44.

2. For claim disputes involving final quantities and payments, the contractor shall submit his claim in writing setting forth the amount in dispute, the basis of the claim and any supporting documentation of said claim to the resident engineer not later than sixty (60) days from the date of the "Final Release" (Form TC 63-34) sent by the cabinet.

(b) The resident engineer in consultation with the district transportation engineering branch manager for construction and the contractor shall attempt to resolve the dispute with the contractor. The resident engineer shall have sixty (60) days from the date of receipt of written notice of a formal claim to resolve the dispute.

(c) Should the claim not be resolved by the resident engineer, then the claim shall be submitted to the Director, Division of Construction, who shall have ninety (90) days to make the final determination.

(d) If the matter is not resolved by the resident engineer and the contractor and prior to making a final determination on the matter, the Director, Division of Construction, shall convene an informal settlement conference with the contractor for the purpose of either settling the dispute or identifying the issues which need resolution. If the settlement conference is unsuccessful, the Director, Division of Construction, shall notify the contractor in writing of the cabinet's decision regarding the contractor's claim. Said notification shall inform the contractor of his rights to an administrative hearing pursuant to Section 10 of this administrative regulation.

(e) Should the resident engineer or the Director, Division of Construction, fail to render a decision within the time limits set forth in this administrative regulation, said inaction shall be deemed a denial of the claim by the cabinet and the contractor may proceed with the administrative hearing process pursuant to Section 10 of this administrative regulation. Further, should the Director, Division of Construction, fail to render a decision in the time frame previously stated, the cabinet shall bear all costs associated with the hearing officer.

(f) The contractor shall request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the notification of the decision by the cabinet.

(g) Upon the agreement in writing of both parties, the parties may engage in formal nonbinding mediation of the dispute with a mediator agreeable to both parties. The parties participating in the mediation shall each pay one-half (1/2) of the costs associated with the mediator.

(h) If mediation is agreed upon by the parties, the formal administrative process that culminates with a KRS Chapter 13B hearing and all time limits therein shall be stayed until the cabinet or the contractor submits written notice to the other that they are terminating the mediation process. The time limits previously stayed shall commence to run upon the date of the written notice.

Section 10. Hearing Procedure. (1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the State Highway Engineer, Department of Highways, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(2) Upon receipt of a request for an administrative hearing, the State Highway Engineer shall forward the request to the Office of General Counsel and Legislative Affairs for proceedings in accordance with the provisions of KRS Chapter 13B. Failure to submit a written request for an administrative hearing to the State Highway Engineer within thirty (30) days of the date of the decision by the Director, Division of Construction, shall be ground to summarily deny the request for hearing and the decision by the Director, Division of Construction, shall stand.

(3) If a hearing is commenced, the hearing examiner shall prepare and submit his report with a recommendation to the Secretary of Transportation through the Office of General Counsel and Legislative Affairs.

(4) The secretary, after receiving the report and recommendation of the hearing examiner, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of the hearing examiner as set out in a final order pursuant to KRS Chapter 13B.

(5) The contractor shall be notified by Final Order of the secretary's decision.

(6) The contractor shall have appeal rights pursuant to KRS Chapter 13B.

(7) The contractor shall reimburse the cabinet one-half (1/2) of the expenses of the hearing officer within thirty (30) days after the date of the entry of the final order by the Secretary of Transportation. The cabinet may withhold any sum owed a contractor on a current or future project that the cabinet is owed for the costs and/or expenses of the hearing officer. [Exhaustion of Engineering Structure Administrative Process. (1) If a contractor has a contract claim or requests relief from the department, the contractor shall exhaust the administrative process within the engineering structure of the department prior to requesting an administrative hearing. The administrative process shall be exhausted by the contractor submitting the claim or request for relief to the following:

(a) First, to the resident engineer in charge of the project out of which the contract claim arose. The contractor shall submit his claim or request to the resident engineer not later than thirty (30) days after issuance of final payment to the contractor under the terms of the contract in question;

(b) Second, to the chief construction engineer in the district; and

(c) Third, to the division through its director. The decision of the division shall be in writing and shall be mailed to the contractor.

(2) The contractor may request an administrative hearing pursuant to Section 10 of this administrative regulation on his contract claim or request for relief within thirty (30) days of the date of the decision of the division.

Section 10. Hearing Procedure. (1) A request for an administrative hearing pursuant to the provisions of this administrative regulation shall be in writing and mailed to the Commissioner, Department of Highways, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(2) Upon receipt of a request for an administrative hearing, the commissioner shall proceed in accordance with the provisions of KRS Chapter 13B.

(3) The hearing examiner shall prepare and submit his report with a recommendation to the commissioner through the state highway engineer and the general counsel. The state highway engineer and the general counsel may concur, not concur or dissent in the report of the hearing examiner.

(a) If the report and recommendation is concurred in by both the state highway engineer and the general counsel, the report and recommendation shall be transmitted to the commissioner for approval.

(b) If either the state highway engineer or the general counsel or both fail to concur in the report and recommendation, the report and recommendation shall be transmitted to the commissioner with any accompanying dissent or comment by the state highway engineer or the general counsel indicating reasons for disagreement.

(4) The commissioner, after receiving the report and recommendation of the hearing examiner and any accompanying dissent or comment, may accept the report and recommendation in its entirety, or reject or modify any or all of the findings and recommendations of the hearing examiner.

(5) The contractor shall be notified in writing of the commissioner's decision in accordance with the provisions of KRS Chapter 13B.

(6) If the commissioner approves relief in whole or in part, the granting of relief shall be conditioned on the contractor's written agreement to accept the relief offered as full satisfaction and accord of all present or future administrative or legal remedies arising from the contract. Granting of the approved relief shall further be conditioned on the contractor's written agreement to dismiss with prejudice by agreed order or unilateral withdrawal any pending legal action against the department concerning the contract.

(7) If the contractor accepts the relief approved by the commissioner and executes the required agreements described above, the commissioner shall sign an official order or certificate of eligibility granting the relief.]

Section 11. Material Incorporated by Reference. (1) The follow-

ing material is incorporated by reference:

(a) [The] Transportation Cabinet form TC 14-1, "Application for Certificate of Eligibility", December 1999 [September 1995] edition;

(b) Transportation Cabinet form TC 63-32, "Notice of Changed Condition/Disagreement", December 1999 edition;

(c) Transportation Cabinet form TC 63-33, "Acknowledgment of Notice of Change Condition/Disagreement", December 1999 edition;

(d) Transportation Cabinet form TC 63-34, "Final Release", March 1998 edition; and

(e) Transportation Cabinet form TC 63-44, "Final Inspection and Formal Acceptance Report of Completed Construction", November 1997 edition.

(2) All material [is] incorporated by reference as a part of this administrative regulation[-];

(2) Copies of the material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of Contract Procurement, 501 High Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-3500.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: February 10, 2000

FILED WITH LRC: February 14, 2000 at 1 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 21, 2000, at 10 a.m., local prevailing time in the State Office Building, Tenth Floor General Counsel Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by March 14, 2000. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 14, 2000. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on March 21, 2000. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: All contractors, approximately 600, prequalified to bid on Transportation Cabinet construction or maintenance projects.

(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. However, we anticipate neither costs nor savings as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held. However, we anticipate neither costs nor savings as a result of the changes to this administrative regulation.

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

1. First year following implementation: As required by state law, this administrative regulation sets forth the application process (in-

cluding the paperwork which must be submitted) in order to be eligible to bid on highway construction or maintenance projects.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct costs are affected. The indirect cost savings will be realized with a reduced number of claims being filed by the contractor and a new process will speed up the claims process.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(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.

(b) Kentucky: A public comment hearing was not held.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of the administrative hearing process included in this administrative regulation was the impetus for the amendment of the regulation. The Transportation Cabinet worked in cooperation with the contracting industry on the revision of this administrative regulation.

(8) Assessment of expected benefits:

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

(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: None known.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. All claims will be subject to this change.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Training, Education and Certification (Amendment)

805 KAR 7:030. Annual retraining.

RELATES TO: KRS 351.106 [351.105]

STATUTORY AUTHORITY: KRS 351.105, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS [351.102 and] 351.106 requires [require] the Department of Mines and Minerals to establish an annual miner retraining program according to the criteria and standards determined by the Mining Board. This administrative regulation establishes the requirements and terms of the annual retraining program.

Section 1. (1) A certified underground miner shall receive a minimum of sixteen (16) hours of annual retraining. At least eight (8) hours of the annual retraining shall be:

(a) Administered in a classroom;

(b) Conducted by a Kentucky certified underground mining instructor and the amount of training documented on the training form defined in Section 1(3) of this administrative regulation and embossed with the instructor's seal;

(2) The balance of such annual retraining may be administered in segments of not less than fifteen (15) minutes. Training administered in this manner shall be provided by, or under the direct supervision of, a Kentucky certified underground mining instructor or a Kentucky certified mine foreman. A person who receives annual

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retraining in this manner shall be notified that each segment is being administered in satisfaction of the annual retraining requirement, and a record of each segment, including dates, duration, subject and attendees, shall be maintained at the mine site until the training form as defined in Section 1(3) of this administrative regulation can be completed.

(3) Documentation of completed training shall ~~[or Kentucky-certified mine foreman; and~~

~~(c) Documented and]~~ include the following information:

~~(a) [1:] Full name of person trained;~~

~~(b) [2:] Miner identification number;~~

~~(c) [3:] Type of mining operation;~~

~~(d) [4:] Type of training received;~~

~~(e) [5:] Date training completed;~~

~~(f) [6:] Subjects taught in that training;~~

~~(g) [7:] Signature of instructor;~~

~~(h) [8:] Signature of miner; and~~

~~(i) [9:] Date of signatures. After completion of his training, or upon the miner leaving employment with the licensee, the miner shall receive a copy of all of his [the] training records [form and be notified that each segment is administered in satisfaction of the annual retraining requirement].~~

(4) [(2)] The annual retraining courses shall include the following subjects:

(a) Transportation controls and communications systems;

(b) Barricading;

(c) Roof control and ventilation plans;

(d) First aid;

(e) Electrical hazards and moving equipment;

(f) Accident prevention;

(g) Self-rescue devices;

(h) Explosives;

(i) Health and safety standards; and

(j) Statutory rights of miners and their representatives.

Section 2. A person employed as a miner shall complete annual retraining within twelve (12) months from the end of the month of his most recent completed annual retraining requirement. A certified miner who has had a break in employment as an underground miner shall be eligible to work if he has successfully completed the annual retraining requirements within the last twelve (12) months.

Section 3. The licensee shall maintain verification of all miner training and certification at the mine premises.

(1) The documentation shall include:

(a) The dates the annual training sessions were conducted;

(b) The name of the miner; and

(c) The miner identification number.

(2) Licensees shall maintain documentation of the miners who are no longer employed by the licensee on the mine premises until the requirements of KRS 351.106(8) are met.

JOHN L. FRANKLIN, Commissioner

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: February 7, 2000

FILED WITH LRC: February 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Tuesday, March 21, 2000, at 1 p.m., prevailing local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, March 14, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, PO Box 2244, Frankfort, Kentucky 40602-2244, Phone (502) 573-0140, FAX 502 573-0152.

REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is not applied because the retraining is required of all miners.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

815 KAR 7:105. Kentucky Building Code/1997.

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the board to adopt a mandatory uniform state building code to establish standards for the construction of all buildings in the state. This administrative regulation incorporates by reference the Kentucky Building Code, Seventh Edition 1997.

Section 1. Incorporation by Reference. (1) "The Kentucky Building Code", (Seventh Edition - 1997), as amended ~~October 21, 1999 [January 21, 1999 and April 15, 1999]~~, by the Kentucky Board of Housing, Buildings and Construction, is incorporated by reference.

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

JUDITH G. WALDEN, Office of General Counsel

DENNIS J. LANGFORD, Commissioner

RONALD MCCLOUD, Secretary

APPROVED BY AGENCY: February 11, 2000

FILED WITH LRC: February 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2000 at 1 p.m., EST, in the office of the Department of Housing, Buildings and Construc-

tion, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2000, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

(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 costs or savings involved because administrative regulation only establishes acceptability and sets standards.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No costs or savings involved as stated 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: None to users of KBC.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of printing KBC but this is recouped by the sale of the code books.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Plan review fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Kentucky Building Code is used and enforced statewide.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative option available; Board of Housing adopts or amends material within defined limits.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety concerns.

(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: Without a building code, construction would not conform to the latest safety standards listed and confusion over some provisions would make design more difficult.

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code.

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: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this administrative regulation.

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

815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

RELATES TO: KRS 198B.650 - 689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) contracting business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors. This amendment is necessary to reduce the number of continuing education hours from ten (10) to eight (8); Section 2(2). [passing grade on the master examination because the board found that seventy-five (75) percent was excessively restrictive.]

Section 1. Definitions. (1) "Master HVAC contractor" or "master" is [as] defined by KRS 198B.650(12) [and is authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems. If the individual is representing a company, the license issued in the name of the individual shall also name the company].

(2) "Journeyman HVAC mechanic" or "journeyman" is [as] defined by KRS 198B.650(10) [and is authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master].

(3) "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent judgment regarding activities of others acting under his direction.

Section 2. General Requirements. (1) Mandatory licensure. Any person, other than one exempted by KRS 198B.674, who is engaged in the business of HVAC contracting shall comply with applicable administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Beginning July 1, 1996, each licensee shall complete eight (8) ~~ten (10)~~ hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) Supervision. The master shall supervise and be primarily responsible for all HVAC work performed by the employees and sub-contractors of the licensee. The master shall assign each apprentice to the oversight of one (1) or more journeyman. The master shall not personally engage in actual installation, maintenance, alteration or remodeling or repair unless the master also possesses a journeyman license.

(4) Company license. A licensee who is an employee of a company whom the licensee is representing shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 7(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application. An applicant seeking a master HVAC contractor license shall meet all of the following application requirements:

(a) An applicant shall submit the Master HVAC Contractor License Application on Form HVAC 1, September, 1995.

(b) The completed application form shall be accompanied by a nonrefundable initial license application fee of \$100; and

(c) An applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) An applicant shall be an individual; and

(e) An applicant shall have and shall verify to the board the applicant's experience as a contractor in the business of installation, alteration, maintenance and performance of repairs and alteration of HVAC systems, as required by Section 5 of this administrative regulation; and

(f) An applicant shall supply a certificate of insurance showing general liability insurance in the minimum amount of \$500,000, including at least \$300,000 for property damage. The named insurance carrier shall be a company which holds a certificate of authority from the Kentucky Department of Insurance; and

(g) If the applicant is an employee representing a company, the company name shall be stated on the application form. The company may provide the insurance certificates required by paragraph (f) of this subsection and shall be subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of all types of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) An applicant shall successfully complete the test known as "Kentucky Master Heating, Ventilation and Air Conditioning Contractor Examination" with a passing grade of seventy (70) percent; or, an applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, Block and Associates, 5209 Linbar Drive, Suite 626, Nashville, Tennessee 37211, or other testing agency approved by the board.

(5) The examination fee shall be fifty (50) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section.

(1) Minimum experience. An applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience in the HVAC business obtained after July 1, 1995, shall be for HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.

(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 6. Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, application for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year to be returned, together with the required fee.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) Licenses which have been placed in inactive status are exempt from annual renewal. They shall be reactivated upon payment of a renewal fee for the year reactivated, the reactivation fee and compliance with continuing education requirements for each year of inactive status.

(6) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if any of the following occur:

(a) The applicant fails to pay the fees required for renewal, reactivation and restoration, if applicable; or

(b) The applicant fails to comply with the continuing education requirements of the board; or

(c) The applicant fails to provide the current insurance certificate.

Section 7. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.

(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until such time as the licensee requests reactivation.

(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 6(5) of this administrative regulation.

(4) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 2(4) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 8. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

Section 9. Material Incorporated by Reference. (1) Form HVAC 1,

VOLUME 26, NUMBER 9 – MARCH 1, 2000

September, 1995, Master HVAC Contractor License Application is incorporated by reference.

(2) Copies of the application form may be obtained from, examined or copied at the Department of Housing, Buildings and Construction, HVAC Program, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

JUDITH G. WALDEN, Office of General Counsel
DENNIS J. LANGFORD, Commissioner
RONALD MCCLOUD, Secretary

APPROVED BY AGENCY: February 11, 2000

FILED WITH LRC: February 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2000 at 1 p.m., EST, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2000, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: All license renewals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment does not affect the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings as a result of this amendment.

2. Continuing costs or savings: No costs or savings as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Regular processes used.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Renewal License fee of \$50 each for 3500 HVAC contractors.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It is important to have as many qualified HVAC contractors and mechanics as can adequately supply the need and some people who are unfamiliar with tests need to retake the tests are given by outside companies.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect if amendment not implemented.

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: The reference material is not being amended.

(11) TIERING: Is tiering applied? Yes. All applicants for renewal qualified equally.

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

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

RELATES TO: KRS 198B.650 through 198B.689

STATUTORY AUTHORITY: KRS 198B.654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics. This amendment is necessary to reduce the number of continuing education hours from ten (10) to eight (8); Section 2(2), [extend continuing education requirements by one (1) year and to include the teaching experience of an HVAC teacher as equal to one (1) year work experience. This amendment is in compliance with HB 189 of the 1996 General Assembly.]

Section 1. Definitions. (1) "HVAC" is defined by [means heating, ventilation and air conditioning, hydronic and burner service systems as defined in] KRS 198B.650(1), (2), (8), (9) and (15).

(2) "Master HVAC contractor" or "master" is [as] defined by KRS 198B.650(12) [and is authorized to contract for and engage in the business of installation, maintenance, altering, remodeling and repair of HVAC systems].

(3) "Journeyman HVAC mechanic" or "journeyman" is [as] defined by KRS 198B.650(10) [and is authorized to install, maintain, alter, remodel, and repair heating systems, ventilation systems, hydronic systems, burner service or cooling systems, under the supervision of a master HVAC contractor].

Section 2. General Requirements. (1) Mandatory licensure. A person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.

(2) Continuing education. Beginning July 1, 1997, each journeyman licensee shall complete eight (8) [ten (10)] hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. An applicant seeking a journeyman license shall meet all of the

following application requirements:

(a) An applicant shall submit the journeyman HVAC Mechanic Application on Form HVAC 2, September, 1995.

(b) The completed application shall be accompanied by a non-refundable initial license application fee of fifty (50) dollars; and

(c) An applicant shall submit proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and

(d) An applicant shall be an individual; and

(e) An applicant shall have and shall verify to the board the applicant's experience in the installation, alteration, maintenance and performance of repairs on and alteration of HVAC systems, as required by Section 5 of this administrative regulation; and

(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(2) Reasonable accommodations will be made where necessary to provide accessibility to disabled applicants, upon request; and oral examinations may be given upon good cause shown.

(3) An applicant shall successfully complete the test known as "Kentucky Journeyman Heating, Ventilation and Air Conditioning Mechanic Examination" with a passing score of seventy (70) percent; or, the applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company, Block and Associates, 5209 Linbar Drive, Suite 626, Nashville, Tennessee 37211, or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination.

(6) The examination shall be provided and administered by the approved testing agency as often as necessary but at least four (4) times a year at various locations.

(7) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another Kentucky HVAC contractor.

(c) Credit for completion of one (1) year of teaching experience in a board or state approved HVAC technical education program shall be considered equivalent to one (1) year employment.

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

Section 6. Renewal Requirements and Procedures. (1) Applications for license renewal shall be filed by each licensee no later than June 30 of each year.

(2) A renewal fee of twenty-five (25) dollars shall be paid prior to renewal. The department shall send renewal application cards to each licensee each year.

(3) Renewal applications filed late, but no later than September 29, shall be accepted, but a restoration fee shall be added to the renewal fee.

(4) Failure to renew by September 29 shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) An application for renewal of a licensed journeyman HVAC mechanic shall be denied if any of the following occur:

(a) An applicant fails to pay the fees required for renewal and restoration, if applicable; or

(b) An applicant fails to comply with the continuing education requirements of the board.

Section 7. Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 6(3) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 8. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

Section 9. Material Incorporated by Reference. (1) Form HVAC 2, September, 1995, Journeyman HVAC Mechanic Application is incorporated by reference.

(2) Copies of the application form may be obtained from, examined or copied at the Department of Housing, Buildings and Construction, HVAC Program, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

JUDITH G. WALDEN, Office of General Counsel

DENNIS J. LANGFORD, Commissioner

RONALD MCCLOUD, Secretary

APPROVED BY AGENCY: February 11, 2000

FILED WITH LRC: February 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, March 21, 2000 at 1 p.m., EST, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 2000, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: All license renewals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment does not affect the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No impact on cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This is a licensing program which does not involve permits and no additional paperwork is required.

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: No costs or savings as a result of this amendment.
 2. Continuing costs or savings: No costs or savings as a result of this amendment.
 3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Regular processes used.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: License fees of journeyman mechanics.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect if not implemented, except to individual applicants and masters for whom they might work.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: The reference material is not being amended.

(11) TIERING: Is tiering applied? No. All applicants for renewal qualified equally.

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

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

RELATES TO: KRS 205.010, 205.200(2), (3), 205.2003, 205.2005, 205.703, 205.720(1), 45 CFR Parts 260 through 265 [205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.52, 233.90, 233.100], 8 USC 1611-1645, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.010, 205.200(2), (3), 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program, the Kentucky Transitional Assistance Program, the block grant program funded pursuant to [under] 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive assistance [money-grants] be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support [enforcement] activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transi-

tional Assistance Program.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(2) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) A physical act [acts] that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity [acts or activities];

(e) Threat [Threats] of, or an attempt [attempts] at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care.

(3) [(2)] "Cabinet" means the Cabinet for Families and Children.

(4) [(3)] "Child" means an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate.

(5) "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(6) [(4)] "Domestic violence" means "battered or subjected to extreme cruelty" pursuant to [as defined in] subsection (2) [(4)] of this section.

(7) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(8) [(5)] "Kentucky Transitional Assistance Program (K-TAP)", means Kentucky's Temporary Assistance for Needy Families (TANF) [program, means a] money payment program for a child who is [children who are] deprived of parental support or care due to:

(a) Death of one (1) parent; or

(b) Continued voluntary or involuntary absence of one (1) [a] parent; or

(c) If [(b) Physical or mental incapacity of one (1) parent when] both parents are in the home;

1. Physical or mental incapacity of one (1) parent; or

2. [(c)] Unemployment of at least one (1) parent [when both parents are in the home].

(9) [(6)] "Kentucky Works" means a program that [which] assists a:

(a) Recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(10) [(7)] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(11) [(8)] "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of relationship [paternity]) parent of the child.

(12) [(9)] "Prior labor market attachment (PLMA)" means the parent has earned not less than \$1,000 during the twenty-four (24) months prior to the application[;] for K-TAP benefits based on the deprivation of unemployment.

(13) [(10)] "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to [under] 8 USC 1101 et seq.;

(b) Granted asylum pursuant to [under] 8 USC 1158;

(c) A refugee who is admitted to the United States pursuant to [under] 8 USC 1157;

(d) Paroled into the United States pursuant to [under] 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to [under]:

1. 8 USC 1253(h), as in effect prior to April 1, 1997; or

2. 8 USC 1231(b)(3);

(f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980; or

(g) An alien who is granted status as a Cuban and Haitian entrant

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pursuant to 8 USC 1522;

(h) Battered or subjected to extreme cruelty in the United States by a:

1. [A] Spouse or [a] parent; or

2. [A] Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or

(i) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States by a:

1. [A] Spouse or [a] parent of the alien without the active participation of the alien in the battery or cruelty; or

2. [A] Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty.

(j) Provisions in paragraph (h) and (i) of this subsection shall apply only if:

1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

2. There is a substantial connection between the battery or cruelty and the need for the benefit; and

3. The alien has been approved or has a petition pending for:

a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);

b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or

c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).

(k) An alien who is lawfully residing in Kentucky and is:

1. A veteran pursuant to [as defined in] 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 USC 5303A(d); or

3. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 USC 1304, or unmarried dependent child of an individual pursuant to [described in] clause a or b of this subparagraph.

(l) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

(14) [(+)] "Qualifying parent" means the parent who meets PLMA.

(15) [(+2)] "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires [in-which] a minor teenage parent [is-required] to learn;

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(16) [(+3)] "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(17) [(+4)] "Supplemental Security Income (SSI)" means monthly a cash payment [payments] made pursuant to [under the authority of]:

(a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(18) [(+5)] "Unemployed parent" (UP) case means K-TAP benefits paid to a family if [when] both parents are in the home and at least one (1) parent is unemployed.

(19) [(+6)] "Work" means participation in a Kentucky Works component pursuant to 921 KAR 2:370, Section 2(2)(c) [the following]:

(a) Unsubsidized employment;

(b) Subsidized employment;

(c) Work experience training;

(d) Community services; or

(e) Work programs established by the cabinet].

Section 2. Age and School Attendance. (1) The definition of a "child", pursuant to [as specified in] Section 1(4) of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for a:

(a) [A] Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) [A] Minor teenage parent pursuant to Section 18(1) of this administrative regulation.

(3) Full- and part-time school attendance shall be defined pursuant to [is defined in] 921 KAR 2:016, Section 1(13) [Standards for need and amount for K-TAP].

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month [months in which] he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 3. Enumeration. (1) A [Each] person included in the K-TAP case shall furnish his Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet [agency] shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident shall be an individual [anyone] who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving assistance funded by a block grant program pursuant to [under] 42 USC 601 et seq. from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen [citizens].

(b) A qualified alien, pursuant to [as defined in] Section 1(13) [(+0)] of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to [as defined in] Section 1(13) [(+0)] of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to [under] 8 USC 1157;

2. An alien who is granted asylum pursuant [under] 8 USC 1158;

3. An alien whose deportation is being withheld pursuant to:

a. 8 USC 1253(h), as in effect prior to April 1, 1997; or

b. 8 USC 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran pursuant to [as defined in] 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 USC 5303A(d); or

c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 USC 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

5. An alien who is a Cuban and Haitian entrant pursuant to 8 USC 1522; or

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

(d) Failure of the parent or other adult, applying for or receiving

benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to [as specified in] Section 1(8) [(5)] of this administrative regulation.

(2) A specific deprivation factor shall be verified for a [each] child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include [includes]:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of:

a. [Of] Thirty (30) days or more if the parent:

- (i) [The parent] Voluntarily leaves; or
- (ii) [The parent] Refuses to accept the child into his home; or
- b. [Of] Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance [circumstances] hazardous to the health or morals of the child; or

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance [circumstances] hazardous to the health or morals of the child; or

(iii) The child is voluntarily placed with a relative [relatives] following a finding by the cabinet that the home is unsuitable; or

(iv) The child is placed by the court with a specified relative other than the parent; or

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or
6. Birth out-of-wedlock.

(b) Involuntary absence shall include [includes]:

1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation; or
4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) A [Each] determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity shall exist [exists] in a case if [when] the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that [which was]:

1. Was present at the time of application; and
2. [Which] Has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) The thirty (30) day period may include a period [in which] the claimant is undergoing:

1. Planned diagnostic study [studies]; or
2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

1. The parent declares physical inability to work;
2. The worker observes some physical or mental limitation; and
3. The parent:

a. Is receiving SSI; or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness pursuant to [as contained in] 42 USC 1382c or 42 USC 416 by the Social Security Administration; or

d. Has been determined to meet the definition of permanent and total disability pursuant to [as contained in] 42 USC 1382c or 42 USC 416 by either the:

(i) [The] Social Security Administration; or

(ii) [The] Medical review team of the cabinet [Department for Community-Based Services]; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be [is also] requested to indicate if incapacity existed as of application date; or

i. Is recovering from surgery, illness or injury that [which] requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period [Periods] longer than six (6) weeks shall be determined through the medical review team; or

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement.

(b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet [agency], if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint [complaints] regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to whether:

1. [Whether] A physical or mental disability, illness or impairment exists; and

2. [Whether] The disability, illness or impairment is;

a. Sufficient to reduce the parent's ability to support or care for a child; and

b. [3-Whether the disability, illness or impairment is] Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;
2. Employment history;
3. Vocational training;
4. Educational background; and
5. Subjective complaint [complaints] regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity [opportunities] available in the claimant's area of residence.

(7) In determining the extent and accessibility of available em-

ployment opportunity [opportunities], the limited employment opportunity [opportunities] of an individual [individuals] with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding available employment opportunity [opportunities] shall be researched;

(b) The local Department for Employment Service office shall be contacted regarding accessible employment opportunity [opportunities] within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) A [Each] claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to [as-provided-in] 921 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if [when] both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to [as-defined-in] Section 1(12) of this administrative regulation.

(2) ~~The determination of the qualifying parent shall include the following:~~

~~(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the qualifying parent, the agency shall designate the qualifying parent using the best evidence available.~~

~~(b) If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.~~

~~(c) Earnings of each parent shall be considered in determining the qualifying parent regardless of when their relationship began.~~

~~(d) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.~~

(3) [Unemployment:] A parent shall be considered to be unemployed if employed:

(a) [Employed] Less than 100 hours in a calendar month; or

(b) In excess of [Employment exceeds] 100 hours in a particular month if the employment [-but the work] is intermittent and the excess is of a temporary nature if [-This would be evidenced by the fact that] the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(c) The 100 hour requirement for unemployment in paragraphs (a) and (b) of this subsection shall apply to a K-TAP applicant [applicants].

(4) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to [meeting the definition in] Section 1(12) [(9)] of this administrative regulation;

1. Gross income from self-employment and farming qualify as earned income in determining PLMA; and

2. The self-employed individual does not have to realize a profit to meet this requirement.

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1000 earnings.

(6) [Restrictions:] Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition [conditions] or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2:370, Section 4(3);

or

2. Subject to Kentucky Works, pursuant to [as-specified-in] 921 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits. [Good cause exists if criteria specified in 921 KAR 2:370, Section 6(1) are met.]

Section 10. Living with a Specified Relative. (1) To be eligible for K-TAP a needy child shall be living in the home of a relative as follows:

(a) [(4)] A blood relative, including a relative of the half-blood;

(b) A [(2) Any] person listed in paragraph (a) of this subsection [(4) of this section] if the alleged father has had relationship [paternity] established through the administrative determination process pursuant to [as-specified-in] Section 11 of this administrative regulation;

(c) [(3)] An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent;

(d) [(4)] A relative by marriage, even if the marriage may have terminated, providing termination occurred after the birth of the child;

1. [(a) For K-TAP eligibility purposes:] A couple that has been considered married by a state with a common-law marriage provision [provisions] shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. [(b) The statement of the applicant or recipient that the couple's marriage recognized from another state as a [he resides in a state which recognizes] common-law marriage shall be accepted as verification by the cabinet [agency].

(2) [(5)] Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Emergency foster care, as verified by the cabinet; or

(e) If it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child, short visit with a friend or relative [visits with friends or relatives].

(3) [(6)] A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care. If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

(a) Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

(b) If no other eligible child is in the benefit group, be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care.

(4) [(7)] If a specified relative fails to notify the cabinet [agency] of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (3) [(6)] of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more. Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 10 c.f. 921 KAR 2:016.

Section 11. Administrative Establishment of Relationship [Paternity]. (1) An administrative determination of relationship [paternity] as

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set forth in this administrative regulation shall be used only to establish relationship for K-TAP eligibility if ~~[and shall be limited to situations in which]~~ the following ~~type~~ ~~[types]~~ of evidence ~~is~~ ~~[are]~~ present:

- (a) A birth certificate listing the alleged parent; or
- (b) Legal document which shall include ~~[documents such as]~~:
 1. Hospital ~~record~~ ~~[records]~~;
 2. Juvenile court ~~record~~ ~~[records]~~;
 3. Will ~~[Wills]~~; ~~[and]~~
 4. Other court ~~record that~~ ~~[records which]~~ clearly ~~indicates~~ ~~[indicate]~~ the relationship of the alleged parent or relative; or
- (c) Receipt of statutory benefits as a result of the alleged parent's ~~circumstance~~ ~~[circumstances]~~; or
- (d) VS-8 "Declaration of Paternity"; or
- (e) VS-8B "Voluntary Acknowledgment"; or
- (f) VS-8C "Three (3) Way Paternity Affidavit"; or
- (g) A sworn statement or affidavit of either parent acknowledging ~~relationship~~ ~~[paternity]~~ plus one (1) of the following:
 1. School ~~record~~ ~~[records]~~;
 2. Bible ~~record~~ ~~[records]~~;
 3. Immigration ~~record~~ ~~[records]~~;
 4. Naturalization ~~record~~ ~~[records]~~;
 5. Church ~~document~~ ~~[documents]~~, such as baptismal ~~certificate~~ ~~[certificates]~~;
 6. Passport;
 7. Military ~~record~~ ~~[records]~~;
 8. U.S. Census ~~record~~ ~~[records]~~; or
 9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative ~~relationship~~ ~~[paternity]~~ may occur if:

- (a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence ~~pursuant to~~ ~~[present in]~~ subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and
- (b) The parent or caretaker relative provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and
2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit ~~pursuant to~~ ~~[specified in]~~ subsection (2)(b) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of ~~relationship~~ ~~[paternity]~~ shall not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receive SSI meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for ~~a~~ ~~[any]~~ month ~~[in which]~~ the parent, with whom the child is living ~~[is]~~, on the last day of the month, ~~is~~ participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for ~~a~~ ~~[any]~~ month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 15. Kentucky Works. The technical requirements for participation in the Kentucky Works Program are ~~pursuant to~~ ~~[specified in]~~ 921 KAR 2:370.

Section 16. Cooperation in Child Support ~~[Enforcement]~~ Activities.

(1) The Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for ~~a~~ ~~child~~ ~~[children]~~ receiving assistance pursuant to Section 1(1) of this

administrative regulation, who has a parent absent from the home due to ~~[K-TAP based on the following voluntary absence deprivation factors]~~:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of ~~a~~ good cause ~~reason~~, pursuant to ~~[reasons, specified in]~~ subsection (4) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include ~~[This includes]~~:

- (a) Identifying the noncustodial parent or obligor;
- (b) Providing information to assist in the:
 1. Location of the noncustodial parent or obligor;
 2. Enforcement of a child support order; or
 3. Review or modification of a child support order;
- (c) Establishing paternity, if required; ~~[and]~~
- (d) Establishing, modifying or enforcing a child support order; and
- (e) Forwarding a child support payment ~~[payments]~~ received to the state's centralized collection agency.

(3) The cabinet ~~[for Families and Children]~~ shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate ~~in a child support activity~~.

(4) The applicant or recipient shall be ~~excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if~~ ~~[determined to have "good cause" for failing to cooperate only when]~~ one (1) ~~[or more]~~ of the following criteria is met:

(a) ~~[The applicant or recipient's]~~ Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to:

1. The child; or
2. The caretaker relative ~~[(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself] to [such] an extent that it would reduce the [his] capacity to care for the child adequately; or~~

(b) ~~[(c)]~~ The child was conceived as a result of incest or forcible rape and the cabinet ~~[department]~~ believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(c) ~~[(d)]~~ Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet ~~[department]~~ believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) ~~[(e)]~~ The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and
2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence ~~used to determine~~ ~~[upon which a determination of]~~ good cause shall ~~include~~ ~~[be made includes the following]~~:

1. Birth ~~certificate~~ ~~[certificates]~~, medical ~~information~~, or law enforcement ~~record~~ ~~[records]~~ indicating that the child was conceived as a result of incest or forcible rape;

2. Court ~~document~~ ~~[documents]~~ or other ~~record~~ ~~[records]~~ indicating legal proceedings for adoption of the child by a specific family is ~~[are]~~ pending before a court of competent jurisdiction;

3. ~~Record or other evidence~~ ~~[Records (court, medical, criminal, child protective services, social services, psychological or law enforcement)]~~ indicating the noncustodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than

three (3) months; or

5. Notarized statement from an individual [~~statements from individuals~~], other than the applicant or recipient, with knowledge of the circumstance that provides [~~circumstances which provide~~] the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;
2. The emotional health history of the individual;
3. The extent and probable duration of the individual's emotional impairment; and
4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation [~~obligations~~].

(c) If [When] the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The cabinet [agency] shall conduct an investigation if it is believed that:

- a. Corroborative evidence is not available; and
- b. The claim is credible without corroborative evidence.

2. If the cabinet [agency] conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the cabinet [agency] to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

- a. Obtain permission for the contact; or
- b. [To] Enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact shall be [is] unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of K-TAP; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet [agency] shall:

- (a) Document the case;
- (b) Determine that good cause:

1. [Good cause] Exists and a support activity [activities] cannot be initiated without endangering the:

- a. [The] Best interests of the child; or
- b. [The] Physical or emotional health of the child or the relative; or
2. [Good cause] Does not exist.

(c) Advise the applicant or recipient in writing of the result of the good cause claim determination; and

(d) Identify each case that [in which] good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the cabinet [agency]:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 921 KAR 2:016; and

(b) The cabinet [agency] shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the cabinet [agency] shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;

(b) Remove the protective payee from the case; and

(c) Not authorize a back payment [payments] for the period [of time for which] the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for K-TAP benefits.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another [any] benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Minor Teenage Parents. (1) A minor teenage parent including a married parent under the age of eighteen (18) living with the spouse shall participate in an educational activity [activities] directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has [minor teenage parent]:

(a) [Has] A minor child at least twelve (12) weeks of age in his care; and

(b) [Has] Not completed a high school education (or its equivalent).

(2) Except pursuant to [as provided in] subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian;

3. An adult relative pursuant to [as described in] Section 10 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) [The] Minor teenage parent does not have a:

1. [A] Parent, legal guardian or appropriate adult relative pursuant to [as described in] Section 10 of this administrative regulation who is living or whose whereabouts is [are] known; or

2. [A] Living parent, legal guardian, or other appropriate adult relative pursuant to [as described in] Section 10 of this administrative regulation who otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent, who would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to [as described in] Section 10 of this administrative regulation; or

(b) [The] Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) [The cabinet determines] Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to [as described in] Section 10 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs [and concerns] of the minor child; or

(b) [The cabinet determines] The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes [circumstances change] and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision [provisions] found in Section 18 of this administrative regulation, payment [payments] to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to [as-described-in] Section 10 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 19. Benefit Time Limits. (1) K-TAP shall not be provided to a benefit group, pursuant to [as-defined-by] Section 1(2) of 921 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program funded pursuant to [under] 42 USC 601 et seq., whether or not consecutive.

(2) ~~A month or months of assistance received by an otherwise eligible benefit group shall not be counted toward the sixty (60) months lifetime limit:~~

(a) ~~If the benefit group contains an adult who is battered or subjected to extreme cruelty pursuant to Section 23 of this administrative regulation; or~~

(b) ~~During a month or months the benefit group is not issued a K-TAP check in accordance with 921 KAR 2:050.~~

(3) ~~After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:~~

(a) ~~Is battered or subjected to extreme cruelty;~~

(b) ~~Has a physical or mental disability prohibiting work as determined by the cabinet;~~

(c) ~~Is required to provide constant care of a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available; or~~

(d) ~~Is a grandparent or other relative except for a parent caring for an eligible child who would otherwise be placed in foster care; or~~

(e) ~~Is an adult with insufficient employment, as determined by the cabinet, who has complied with all program requirements including participation in Kentucky Works.~~

(3) ~~[(4)] If otherwise eligible, a benefit group containing a member who has lost a job within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) month extension of the time limitation.~~

~~[(5)] Each month of participation in the wage supplementation component of Kentucky Works, pursuant to 921 KAR 2:370, Section 2 shall count toward the sixty (60) month lifetime limit.~~

(4) ~~[(6)](a) Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in an approved work activity [activities], if available, pursuant to [as-defined-in] Section 1(19) [(16)] of this administrative regulation.~~

(b) ~~The twenty-four (24) month limitation shall not be applied until the individual has been penalized for failure to participate in Kentucky Works, pursuant to 921 KAR 2:370, Section 7, for a period of six (6) cumulative months.~~

(5) ~~[(7)] Time limitations shall apply to a:~~

(a) ~~Sanctioned individual pursuant to 921 KAR 2:016, Section 1(26); or~~

(b) ~~Penalized individual pursuant to [as-defined-in] 921 KAR 2:016, Section 1(23) [(22)].~~

Section 20. Receiving Assistance in Two (2) or More States. (1) K-TAP assistance shall be denied for ten (10) years to a person who has:

(1) ~~been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:~~

(a) ~~[Under] A program pursuant to [funded under]:~~

1. 42 USC 601 et seq.;

2. 42 USC 1396; or

3. 7 USC 2011 et seq.; or

(b) ~~[For] Benefits received under supplemental security income.~~

(2) ~~The requirement in subsection (1) of this section shall not ap-~~

ply to a conviction for a month [any-months] beginning after the granting of a pardon by the President of the United States with respect to the conduct that [which] was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to:

(a) An individual fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that [which] is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month [any-month] beginning after the President of the United States grants a pardon with respect to the conduct.

~~[(3)] The sixty (60) month lifetime benefit limitation in Section 19 of this administrative regulation shall apply to a benefit group containing an adult who is ineligible for K-TAP as a result of subsection (1) of this section.]~~

Section 22. Denial of Assistance for a Drug Felon [Felons]. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that [which] has as an element the possession, use or distribution of a controlled substance pursuant to [as-defined-in] 21 USC 802(6), shall not be eligible for K-TAP benefits, except pursuant to [as provided by] KRS 205.2005.

(2) ~~An [Each] individual applying for K-TAP benefits shall be required to state in writing whether the individual or a [any] member of the household has been convicted of a crime pursuant to [described in] subsection (1) of this section.~~

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and concerns identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed no less often than every six (6) months, [and at risk of further domestic violence as determined by the cabinet, the individual shall be referred to counseling and supportive services.]

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, [for an individual who is at risk of further domestic violence, as determined by the cabinet,] the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 4 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 921 KAR 2:370.

Section 24. [Immunizations. (1) Except as provided under KRS 214.036, a recipient of K-TAP shall maintain current immunizations for an under school age child, pursuant to the Cabinet for Health Services, Department for Public Health Immunization Schedule in 902 KAR 2:060.

(2) ~~The parent or caretaker relative shall be sanctioned, as defined in 921 KAR 2:016, Section 1, for failure to maintain current immunizations.~~

Section 25. Incorporation by Reference. (1) The following material

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is incorporated by reference:

- (a) PA-1C Supplement D, "Qualifying Parent Eligibility, edition 5/00 [5/99]";
- (b) PA-14, "Declaration of citizenship or Alien Status, edition 5/00 [8/97]";
- (c) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 5/00 [8/97]";
- (d) PA-121, "Good Cause Claim/Determination, edition 5/99";
- (e) PA-202TP, "Teen Parent Personal Responsibility Plan, edition 5/00 [8/97]";
- (f) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98";
- (g) CS-333, "Facts About the Child Support Program, edition 5/00 [4/99]"; and
- (h) CS-333.1, "Facts About the Right to Claim Good Cause, edition 4/99".

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 9, 2000

FILED WITH LRC: February 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2000, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2000, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant money payment program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. As of October 1999, approximately 39,880 families in Kentucky received K-TAP, including 25,751 adults and 66,014 children. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing or written comments were received as a result of 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 comment received: No requests for a hearing or written comments were received as a result of 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: The individuals who are applicants or recipients of K-TAP will have no additional compliance, reporting or paperwork requirements due to the amendments to this administrative regulation.

1. First year following implementation: For K-TAP recipients, identified as being in a domestic violence situation and K-TAP or Kentucky Works requirements are waived, an appropriate domestic violence service plan will be required and developed by Cabinet staff trained in domestic violence. The plan will be designed to lead safely to work. Redetermination of this plan is required every 6 months. This additional requirement will create little or no impact to the recipient except possibly an additional trip to the local Community Based Services office, if needed.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: No fiscal impact to the agency is anticipated due to the amendments to this administrative regulation.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: none

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(b) Kentucky: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the amendments to the regulation are required to comply with federal regulations issued on April 12, 1999.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with federal TANF regulations issued April 12, 1999, that were effective October 1, 1999.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: TANF Block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not comply with federal requirements found in 45 CFR Parts 260 through 265, effective October 1, 1999. Prior to the issuance of the final federal TANF regulations, states were allowed to operate programs under a reasonable interpretation of the TANF federal statutes as a result of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, this standard only applies until the effective date of the final TANF regulations which is October 1, 1999. At that time, states are required to implement changes in the programs to comply with these federal regulations. If these changes are not implemented, penalties and loss of federal funds may result. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR Parts 260 through 265
2. State compliance standards. KRS 205.2003; 205.2005
3. Minimum or uniform standards contained in the federal mandate. Federal regulations contain standards regarding the definition of "assistance" funded with TANF federal funds.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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

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

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 205.2001, [42 CFR 435.831;] 45 CFR Parts 260-265 [233, 233.20(a)(13)], 25 USC 1408, 42 USC 602

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 USC 601 et seq. This administrative regulation sets forth the standards of the need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to [any person specified in] 921 KAR 2:006, Section 10.

(a) The benefit group shall include:

1. The dependent child;
2. The child's parent living in the home with the needy child who

is:

- a. Eligible for K-TAP; or
- b. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 19; and
3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(3) [(2)] "Beyond the control" means:

- (a) Loss or theft of the money;
- (b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet an extraordinary expense, that is [expenses, that are] not included in the K-TAP Standard of Need.

(4) [(3)] "Burial space" means a space and a related service [certain-related-services] used for the remains of a deceased person that may include [-This includes]:

- (a) A grave site;
- (b) Cost [Costs] to open and close the grave;
- (c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(5) "Cabinet" means the Cabinet for Families and Children.

(6) [(4)] "Change in circumstances" means a change in income or [and] dependent care expense affecting [expenses which affects] the ongoing K-TAP payment that [-This] shall include:

- (a) Beginning or ending employment;
- (b) Change in an employer [employers] or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or
- (f) Change in farm cropping arrangement [arrangements] or type of self-employment activity [activities].

(7) [(5)] "Claimant" means the individual responsible for an overpayment.

(8) [(6)] "Countable income" means income that [which] remains after excluded income and appropriate deductions are removed from gross income.

(9) [(7)] "Deduction" means an amount subtracted from gross income to determine countable income.

(10) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(11) [(8)] "Excluded income" means income that is received but not counted in the gross income test.

(12) [(9)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(13) [(10)] "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development program; or
3. A literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school or vocational school to fulfill their definition of full time.

(14) [(11)] "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 8 of this administrative regulation.

(15) [(12)] "Job Training Partnership Act Program (JTPA)" means a program that prepares a youth and unskilled adult [adults] for entry into the labor force. Only an individual who is [these individuals who are] certified as eligible for the program may [can] benefit from JTPA funds.

(16) [(13)] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for a child who is [children who are] deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.

(17) [(14)] "Kentucky Works" means a program that [which] assists a:

- (a) Recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or
- (b) Former K-TAP recipient with job retention service.

(18) [(15)] "Lump sum income" means income that does not:

1. Occur on a regular basis; or
2. [and does not] Represent accumulated monthly income received in a single sum.

(19) [(16)] "Minor" means a [any] person who is under the age of:

- (a) Eighteen (18); or
- (b) [under the age of] Nineteen (19) pursuant to [in accordance with] 921 KAR 2:006, Section 1.

(20) [(17)] "Minor teenage parent" means an individual who:

- (a) Has not attained eighteen (18) years of age;

- (b) Is not married or is married and not living with the spouse; and
- (c) Has a minor child in the applicant's or recipient's care.

(21) [(18)] "Part-time employment" means employment of:

- (a) Less than thirty (30) hours per week;
- (b) [or] 130 hours per month; or
- (c) Not employed throughout the entire month.

(22) [(19)] "Part-time school attendance" means a workload that is [of anything] less than "full-time school attendance."

(23) [(20)] "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement that [which] causes a pro rata reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(24) [(21)] "Prospective budgeting" means computing the amount of assistance based on income and circumstances that [which] will exist in the month the [month(s) for which] payment is made.

(25) [(22)] "Recoupment" means recovery of an overpayment [overpayments] of an assistance payment [payments].

(26) [(23)] "Sanctioned individual" means a [any] person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(27) [(24)] "Self-employment income" means income from a business enterprise if [from which no] taxes are not withheld prior to receipt of the income by the individual.

(28) [(25)] "Supplemental security income (SSI)" means a monthly cash payment [payments] made pursuant to [under the authority of]:

- (a) 42 USC 1381 to 1385 to the aged, blind and disabled;
- (b) 42 USC 1382e; or
- (c) 42 USC 1382.

(29) [(26)] "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(30) [(27)] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools [and transportation].

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

- (a) Available to the benefit group; and
- (b) Owned in whole or in part by:

- 1. An applicant or recipient;
- 2. A sanctioned or penalized individual; or
- 3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of \$2,000 equity value excluding an item or [these] items [specifically] listed in subsection (3) of this section.

(3) Excluded resources. The following resources shall be excluded from consideration:

- (a) One (1) owner-occupied home;
- (b) One (1) motor vehicle;
- (c) Basic household item or items essential for day-to-day living,

including:

- 1. Furniture;
- 2. Appliances; and
- 3. Clothing;

- (d) Gift or inheritance not legally available until a later date;
- (e) Nonessential item with a value of less than fifty (50) dollars;

(f) [All] Resources of a recipient of SSI or the state supplementation program living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption;

(i) Real property that [which] the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit group shall agree to repay K-TAP benefits received beginning with the first month of the exemption.

2. An [Any] amount of K-TAP paid during a [that] period that would not have been paid if the disposal of property had occurred at the beginning of the period shall be [is] considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for another [any other] reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) A child's [Children's] toys and bicycle [bicycles];

(k) Household pet [pets];

(l) Resources of a child excluded from the K-TAP grant;

(m) Resources of an individual not receiving assistance but living in the home including:

- 1. The stepparent;
- 2. Parent or legal guardian of a minor parent;
- 3. The spouse of a nonresponsible specified relative; or
- 4. The spouse of a minor dependent child;

(n) Amount of the K-TAP grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;

(p) Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;

(q) Excluded income, pursuant to [as specified in] Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during a period [periods] of unavailability;

(s) One (1) burial space per K-TAP family member;

(t) Per family member, up to \$1,500 of the total value of:

- 1. Prepaid burial funds; and
- 2. Cash surrender value of all burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to \$12,000 to Aleutians and \$20,000 to an individual [individuals] of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or his survivor [veterans or their survivors];

(x) Earned income tax credit payment [payments] in the month of receipt and the following month;

(y) A [Any] payment received from the Radiation Exposure Compensation Trust Fund;

(z) A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month; and

(aa) Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that [in which] the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) A bank account [accounts] requiring one (1) signature for with- drawal [withdrawals].

1. Unless the other owner is a recipient of SSI, the total balance of

the account shall be [is] considered available to the K-TAP applicant or recipient.

2. If the other owner receives SSI, the balance shall be [is] divided evenly by the number of owners and [only] the K-TAP applicant or recipient's share shall be [is] considered available.

(b) For a bank account that requires [accounts which require] more than one (1) signature for withdrawal, [withdrawals, determine] the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the [determine] applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is [resources are] held jointly, other than a resource pursuant to [those listed in] paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be [is] determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who may deposit and withdraw [deposits and withdraws]; and

2. A written statement from each of the other owners that [which] corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been established on or after May 1, 1997, funded through periodic contributions by a member of the benefit group using funds derived from earned income that [which] was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that [expenses which] shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution; and

b. Fees, books, supplies and equipment required for a course [courses] of instruction at an eligible educational institution;

c. An eligible educational institution shall be an:

(i) [An] Institution pursuant to [described in] 20 USC 1088(a)(1) or 1141(a); or

(ii) [An] Area vocational education school pursuant to [as defined by] 20 USC 2471(4)(C) or (D);

2. First home purchase that [which] includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure [expenditures] for a business that does not contravene a [any] law or public policy, as determined by the cabinet, pursuant to a qualified plan. A qualified plan shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good [services or goods] to be sold, a marketing plan, and projected financial statement [statements]. Assistance of an experienced entrepreneurial advisor may be required; or

4. Other purpose allowed by a federal regulation or clarification [regulations or clarifications].

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to [listed in] paragraph (b) of this subsection;

(d) To be considered an exempt resource, an individual development account shall be matched by funds from:

1. A nonprofit organization; or

2. Funding permitting, a state or local government agency acting in cooperation with an organization pursuant to [described in] subparagraph 1 of this paragraph.

Section 3. Income Limitations. In determining eligibility for K-TAP, the following shall apply:

(1) Gross income test.

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard. This income shall include [includes]:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;

3. Income of a sanctioned or penalized individual; and

4. An amount deemed available from:

a. The parent of a minor parent living in the home with the benefit group;

b. [5- An amount deemed available from] A stepparent living in the home;

c. [6- An amount deemed available from] The spouse of a minor dependent child living in the home; or

d. [and

7- An amount deemed available from] An alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types pursuant to [specified in] Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be [is] ineligible.

(2) Benefit calculation.

(a) If the benefit group meets the criteria pursuant to [set forth in] subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to [in] Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to [as set forth in] Section 8 of this administrative regulation, the benefit group shall be [is] ineligible.

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a [any] month the [for which] assistance is paid exceeds a limit pursuant to [the limits as set forth in] subsection (2) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months that [which] equals the quotient of the division of total countable income by the standard of need pursuant to [as set forth in] Section 8 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if [any of the following circumstances occur]:

1. The standard of need pursuant to [set forth in] Section 8 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that [which] caused the calculation of the ineligibility period, has become unavailable for a reason [reasons] that was [were] beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense [expenses] not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet [agency] determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded Income and Deductions. [All] Gross non-K-TAP income received or anticipated to be received by the benefit group, sanctioned or penalized individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy pursuant to [as set forth in] the following subsections:

(1) Gross income test. An income [Incomes] listed in this subsection shall be excluded:

(a) A deduction [Deductions] applicable to stepparent income,

income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to [as set forth in] Section 6 of this administrative regulation;

(b) A deduction [Deductions] applicable to an alien sponsor's income, pursuant to [as set forth in] Section 7 of this administrative regulation;

(c) A deduction [Deductions] applicable to self-employment income;

(d) The difference between the standard of need and the payment maximum for the benefit group, pursuant to [as specified in] Section 8 of this administrative regulation, if [for households in which] a member of the benefit group receives a JTPA stipend;

(e) Value of United States Department of Agriculture program benefits including:

1. Donated food [foods];
2. Supplemental food assistance received pursuant to [under] 42 USC 1771;

3. Special food service program for a child pursuant to [children under] 42 USC 1775;

4. Nutrition program for the elderly pursuant to [under] 42 USC 3001; and

5. The monthly food stamp allotment;

(f) Reimbursement for transportation in performance of an employment duty [duties], if identifiable;

(g) The value of Kentucky Works supportive services payment pursuant to [payments authorized under] 921 KAR 2:017;

(h) Nonemergency medical transportation payment [payments];

(i) Payment [Payments] from complementary program [programs] if no duplication exists between the other assistance and the assistance provided by the K-TAP program;

(j) Educational grant, loan, scholarship [grants, loans, scholarships], and work study income, including:

1. Payment [Payments] obtained and used under a condition [conditions] that preclude their use for current living cost [costs]; and

2. An education grant or loan to an [All education grants and loans to any] undergraduate made or insured under a [any] program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant [grants];

(n) Home produce utilized for household consumption;

(o) Housing subsidy [subsidies] received from federal, state or local governments;

(p) Receipt [Receipts] distributed to a member [members] of certain Indian tribes by the federal government pursuant to [under] 25 USC 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of an [members of any] Indian tribe by the federal government pursuant to [under] 25 USC 459, 1261 and 1401;

(r) Payment [Payments] for supporting services or reimbursement of out-of-pocket expense [expenses] made to an individual volunteer [individual volunteers] serving under a program pursuant to [programs authorized by] 42 USC 5001 and 42 USC 5011, including a:

1. Foster grandparent [grandparents];

2. Senior health aide [aides];

3. Senior companion; or [companions];

4. Member of the:

a. Service Corps of Retired Executives; or

b. [and

5. Active Corps of Executives;

(s) Payment [Payments] to "Volunteers in Service to America" (VISTA) participant pursuant to [participants under] 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(t) Payment [Payments] from the cabinet [for Families and Children] for:

1. Child foster care; or

2. Adult foster care;

(u) Energy assistance payment [Payments] made under:

1. The Low Income Home Energy Assistance Program pursuant to [under] 42 USC 8621; or

2. [and] Other energy assistance payment [payments which are] made to an energy provider or provided in-kind;

(v) Child support payment [payments] until K-TAP is received;

(w) Earnings of an individual attending school who is age [:

1. A child; or

2. A parent who is:

a. Under the age of eighteen (18); or

b. Age eighteen (18) or nineteen (19) or under;

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring gift [gifts] of thirty (30) dollars or less received per calendar quarter for an [each] individual included in the assistance group;

(z) The principal of a verified loan;

(aa) Up to \$12,000 to Aleuts and \$20,000 to an individual [individuals] of Japanese ancestry for payment [payments] made by the United States Government to compensate for a hardship [hardships] experienced during World War II;

(bb) Income of an individual receiving SSI;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015 [payments];

(ee) The advance payment or refund of earned income tax credit;

(ff) Payment [Payments] made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) Child support received in a month [for which] the K-TAP payment is suspended;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payment [Payments] made from the Agent Orange Settlement Fund;

(kk) K-TAP back payment [payments];

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to [as specified in] 921 KAR 2:006, Section 10;

(mm) Payment [Payments] made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual Indians denied from a lease [leases] or other use [uses] of individually-owned trust or restricted lands;

(oo) Payment [Payments] made to an individual [individuals] because of his [their] status as a victim [victims] of Nazi persecution; and

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census.

(2) Benefit calculation. Excluded income pursuant to [in] subsection (1) of this section and an [any] applicable deduction listed in this subsection shall be applied:

(a) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(b) On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP;

c. A sanctioned individual whose earned income is considered available to the K-TAP household;

d. At the option of the recipient, a K-TAP case that [which] would otherwise be ineligible for K-TAP without the benefit of the disregard for child care; or

e. The month of application for K-TAP benefits; and

2. Shall not exceed:

a. \$175 per month per individual for full-time employment; or

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2).

(c) Child support payment [payments] assigned and actually forwarded or paid to the cabinet [department]; and

(d) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. Until the individual has earnings, reported timely, from new employment, the [These] deductions shall not be available to the individual after expiration of the time limits [until he has earnings, reported timely, from new employment]; and

(e) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings.

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient.

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

(3) Deductions from earnings pursuant to [in] subsection (2)(a), (b) and (d) of this section shall not apply for a [any] month [in which] the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1).

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (2)(d) of this section;

(c) Fails to report an [and] increase in earnings, that [which] impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

(4) Changes in income and resources of the benefit group that contains a member who is participating in the wage supplementation component of Kentucky Works pursuant to 921 KAR 2:370 shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 5. Child Care Payments. With the exception of those circumstances pursuant to [outlined in] Section 4(2)(b) of this administrative regulation, a child care expense [expenses] incurred as a result of employment shall be paid pursuant [according] to 922 KAR 2:160.

Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to [as described in] subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual shall be [is] considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to [as set forth in] Section 8 of this administrative regulation for:

1. The support of the individual; and

2. A [Any other] person living in the home if:

a. The needs of the person are not included [His needs are not taken into consideration] in the K-TAP eligibility determination; and

b. He is or may be claimed as a dependent for the purpose [purposes] of determining his federal personal income tax liability by the individual;

(c) An [Any] amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose [purposes] of determining his personal income tax liability by the

individual;

(d) Payment [Payments] for alimony or child support to a person not living in the home by the individual;

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, that [which] is counted in determining eligibility and the amount of payment to the K-TAP unit in the month received, in a [any] subsequent month.

(3) Sanction exception. The income of a [any] sanctioned individual shall not be [is not] eligible for a deduction [the deductions] listed in this section.

(4) A resource shall not be considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs [Resources which belong] solely to the:

(a) Stepparent;

(b) Spouse of a minor dependent child;

(c) Spouse of a specified relative other than a parent; or

(d) Parent of a minor parent [are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group].

Section 7. Alien Income and Resources. (1) For the purpose [purposes] of this section, the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. This subsection and subsections (2), (3), (4), (5), and (6) of this section shall apply to an immigrant [immigrants] who has [have] an agreement executed other than an agreement pursuant to 8 USC 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction [deductions] set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien shall be [is] ineligible for a [any] month in that [which] adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, that [which] has executed an affidavit of support, the [that] alien shall be [is] ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to an alien pursuant to [those aliens identified in] subsection (5) or (7) of this section.

(a) Income. The gross income of the sponsor shall be [is] considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP standard of need for the appropriate family size pursuant to [as set forth in] Section 8 of this administrative regulation of:

a. The sponsor; and

b. Other person [persons] living in the household:

(i) Who is [are] or may be claimed by the sponsor as a dependent [dependents] in determining his federal personal income tax liability; and

(ii) The person's [Whose] needs are not considered in making a determination of eligibility for K-TAP;

3. An amount [Amounts] paid by the sponsor to nonhousehold member [members] who is [are] or may be claimed as a dependent [dependents] in determining his federal personal tax liability;

4. Actual payment [payments] of alimony or child support paid to a nonhousehold member [members]; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were a K-TAP applicant in this state, less \$1,500.

(7)(a) For a sponsored alien [aliens] who enters [enter] the United States on or after December 19, 1997, who is [are] required to complete a sponsorship agreement pursuant to 8 USC 1183a, the

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total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien. The sponsor's obligation shall be available until:

1. The immigrant:
 - a. Becomes a United States citizen;
 - b. Is ~~Can be~~ credited with forty (40) quarters of work; or
 - c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or
2. The sponsor dies.

(b) The immigrant shall provide the sponsorship agreement pursuant to 8 USC 1183a.

(8) If an amount less than the amount in the sponsorship agreement is made available to the immigrant, the actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the month of the determination if an alien is determined indigent. An alien shall be ~~is~~ determined indigent if:

(a) The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and

(b) Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual ~~other individuals~~ including the sponsor, the alien is ~~would be~~ unable to obtain food and shelter;

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) ~~The~~ Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. ~~A~~ Spouse or parent; or
2. ~~A~~ Spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) ~~The~~ Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. ~~A~~ Spouse; or
2. ~~A~~ Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 8. Payment Maximum. (1) The K-TAP payment maximum includes an amount ~~amounts~~ for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to ~~as determined by the provisions of~~ Section 9 of this administrative regulation, shall be ~~is~~ subtracted in determining eligibility for and the amount of the K-TAP assistance payment as follows:

[Effective December 1, 1995]		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$401 [394]
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit shall be ~~is~~ as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$742 [729]
2 Persons	\$851
3 Persons	\$974
4 Persons	\$1096
5 Persons	\$1218
6 Persons	\$1340
7 or more Persons	\$1462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of ei-

ther:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or

2. The payment maximum pursuant to subsection (2)(a) of this section ~~[whichever is the lesser amount]~~.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to ~~[listed in]~~ subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to ~~[in accordance with]~~ KRS 205.200(2).

Section 9. Best Estimate. (1) ~~The agency shall compute~~ The benefit shall be computed by using a ~~[its]~~ best estimate of income that may ~~[which will]~~ exist in the payment month.

(2) The following method ~~methods~~ shall be used ~~[by the agency]~~ to calculate a best estimate:

(a) For a case ~~cases~~ with earned income, other than self-employment earned income:

1. Cents shall: ~~The agency:~~

a. Not be rounded ~~Shall not round cents~~ to the nearest dollar before adding or multiplying hourly or daily earnings; and ~~but~~

b. Be rounded ~~Shall round cents~~ to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, ~~the agency shall use~~ income from all pay periods in the preceding two (2) calendar months shall be used.

3. ~~The agency shall determine~~ A monthly amount shall be determined by:

- a. Adding gross income from each pay period;
- b. Dividing by the total number of pay periods considered;
- c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by four and one-third (4 1/3);

(ii) ~~a~~ Biweekly amount by two and one-sixth (2 1/6); or

(iii) ~~a~~ Semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, ~~the agency shall compute~~ the anticipated monthly income shall be computed by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

c. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph ~~[by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2)];~~ and

d. Rounding to the nearest dollar.

(b) For a case ~~cases~~ with unearned income, other than unearned self-employment income, ~~the agency shall determine~~ a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;

3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For a case ~~cases~~ with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, ~~the agency shall prorate~~ the income shall be prorated by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, ~~the agency shall prorate~~ the income shall be prorated by dividing by the number of months the business has been in existence.

3. ~~The agency shall determine~~ Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

- (a) At six (6) month intervals for a case [cases] with:
 - 1. Earned or unearned income other than self-employment; or
 - 2. Income from a self-employment enterprise that [which] has not been in existence for at least one (1) year;
- (b) At twelve (12) month intervals for a case [cases] with a self-employment enterprise that [which] has been in existence for at least one (1) year;
- (c) If [Whenever] the agency becomes aware of a change in a circumstance [circumstances]; or
- (d) To reflect a mass change in the standard of need or payment maximum standard pursuant to [as set forth in] Section 8 of this administrative regulation.

Section 10. K-TAP Recoupment. Except for an overpayment [those overpayments] in administrative regulation 921 KAR 2:017, the following provisions are effective for an overpayment discovered on or after April 1, 1982, regardless of when the overpayment occurred.

- (1) Necessary action will be taken promptly to correct and recoup an overpayment.
- (2) An overpayment, including assistance paid pending a hearing decision [decisions], shall be recovered from:
 - (a) The claimant;
 - (b) The overpaid benefit group;
 - (c) A [Any] benefit group that [of which] a member of the overpaid benefit group has subsequently become a member; or
 - (d) An [Any] individual member of the overpaid benefit group whether or not currently a recipient.
- (3) An overpayment shall be recovered through:
 - (a) Repayment by the individual to the cabinet; or
 - (b) Reduction of future K-TAP benefits, that [which] shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to [in accordance with] Section 8 of this administrative regulation; or
 - (c) Civil action in the court of appropriate jurisdiction.
- (4) In a case that has [cases which have] both an overpayment and an underpayment, they shall be [the cabinet shall] offset one against the other in correcting the payment to a current recipient [recipients].
- (5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing pursuant to [as specified in] 921 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily return a benefit check to avoid an overpayment if the:

- (a) [The] Case is totally ineligible for the month [for which] the check is issued; and
 - (b) [The] Check has not been reduced for recoupment of a previous overpayment.
- (2) If a check is voluntarily returned, a determination shall be made [the agency shall determine] whether or not the recipient is due a refund as described in Section 12 of this administrative regulation.

Section 12. Refund. A recipient shall be due a refund in the following situations:

- (1) [The agency recoups] An amount in excess of the actual overpayment is recouped;
- (2) [The agency offsets] An overpayment and an underpayment is offset and [finds] a balance is owed to the recipient;
- (3) A [recipient voluntarily returns a] K-TAP check that is voluntarily returned to avoid an overpayment is compared to [and] the current month obligation of child support [was] collected by the cabinet [agency] during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 13. Correction of Underpayments. The following provisions shall apply to a [all] K-TAP payment [payments]:

- (1) [The department shall promptly correct] An underpayment shall be promptly corrected to:
 - (a) A current K-TAP recipient; and
 - (b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

- (a) The month the payment is paid; or
- (b) The next following month.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) PA-30.2, "Payment Receipt, edition 5/00 [2/97]";
 - (b) PA-35, "Sale of Property Agreement to Repay K-TAP Benefits to the Commonwealth of Kentucky, edition 5/00 [8/97]";
 - (c) FA-1, "Transitional Assistance Self-assessment, edition 5/99".
- (2) These forms may be inspected and copied at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 9, 2000

FILED WITH LRC: February 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2000, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2000, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). As of October 1999, approximately 39,880 families in Kentucky received K-TAP, including 25,751 adults and 66,014 children. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing or written comments were received as a result of 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 comment received: No requests for a hearing or written comments were received as a result of 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: The individuals who are

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applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: No fiscal impact to the agency is anticipated due to the amendments to this administrative regulation.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(b) Kentucky: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the amendments to the regulation are required to comply with federal regulations issued on April 12, 1999.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with federal TANF regulations issued April 12, 1999, effective October 1, 1999.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: TANF Block grant funding for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not comply with federal requirements found in 45 CFR Parts 260 through 265, effective October 1, 1999. Prior to the issuance of the final federal TANF regulations, states were allowed to operate programs under a reasonable interpretation of the TANF federal statutes as a result of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, this standard only applies until the effective date of the final TANF regulations which is October 1, 1999. At that time, states are required to implement changes in the programs to comply with these federal regulations. If these changes are not implemented, penalties and loss of federal funds may result. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR Parts 260 through 265

2. State compliance standards. KRS 205.2001

3. Minimum or uniform standards contained in the federal mandate. Federal regulations contain standards regarding the definition

of "assistance" funded with TANF federal funds.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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

921 KAR 2:017. Kentucky Works supportive services.

RELATES TO: KRS 205.200(2), 205.211, 205.2003, 45 CFR Parts 260 through 265, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), 205.2003, 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive assistance [K-TAP money grants] be prescribed by administrative regulations in conformity with 42 USC 601 et seq. and federal regulations. KRS 205.2003 requires administrative regulations for the development of a work program for recipients of public assistance to provide for immediate employment or preparation for employment and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation sets forth the requirements for receiving Kentucky Works supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works activity [activities]" means participation in an allowable activity pursuant to 921 KAR 2:370, Section 2(2)(c).

(2) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(3) "Cabinet" means the Cabinet for Families and Children.

(4) [(3)] "Component" means a service or activity [services and activities] pursuant to 921 KAR 2:370, Section 2(2)(c).

(5) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(6) [(4)] "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement Form KW-202 "K-TAP Transitional Assistance Agreement", incorporated by reference in 921 KAR 2:370, and referral [referrals] for removal of concerns takes place.

(7) [(5)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(8) [(6)] "Kentucky Transitional Assistance Program (K-TAP)", means Kentucky's Temporary Assistance for Needy Families (TANF) [program; means a] money payment program for a child [children] pursuant to 921 KAR 2:006, Section 1.

(9) [(7)] "Kentucky Works" means a program that [which] assists a:
(a) Recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(10) [(8)] "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(11) [(9)] "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(12) [(10)] "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(13) [(11)] "Transitional extension" means a period of up to twelve (12) months [ninety (90) days] subsequent to the discontinuance of the K-TAP case in which a supportive service payment [payments] may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) Total gross income of the benefit group, pursuant to 921 KAR 2:016, Section 1(2), is at or below 200 percent of federal poverty level, adjusted annually; and

(d) The Kentucky Works participant;

1. Elects to continue the approved component activity in which he is engaged at the time of discontinuance; and
2. Is employed.

Section 2. Kentucky Works Participation and Supportive Services Payment [Entitlement]. (1) Except for the exclusions listed in this administrative regulation, ~~a [those individuals participating in the Kentucky Works Program shall be entitled to]~~ payment of a supportive services cost, [costs] necessary for participation in an approved Kentucky Works activity, as determined by the cabinet, shall be made for an individual participating in the Kentucky Works Program.

(2) Kentucky Works activities are pursuant to [described in] 921 KAR 2:370, Section 2(2)(c).

Section 3. Transportation [Payments in Kentucky Works components]. Transportation reimbursement shall be paid, or a transportation service provided by a regional capitated transportation network, in the following situations:

- (1) Precomponent;
- (2) Component preparation;
- (3) Component participation, ~~with the exception of OJT and unsubsidized employment, while the K-TAP case remains active. Transportation expenses for individuals in unsubsidized employment are covered by the work expense standard deduction as defined in 921 KAR 2:016, Section 1; or~~
- (4) Transitional extension; ~~or~~
- (5) ~~On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement].~~

Section 4. Transportation Payment Amount and Authorization. (1) If free transportation is unavailable ~~that [which]~~ meets the needs of the recipient, transportation shall be provided for an individual [individuals] participating in an approved Kentucky Works activity [activities] through:

- (a) Arrangement by the state K-TAP agency or contractor; and
- (b) After receipt of verification, in an area where a transportation service is not provided by a regional capitated transportation network, a direct payment to the individual shall be made through the System Tracking for Employability Program (STEP), as follows:

1. If low-cost transportation is available and meets the needs of the individual, the actual transportation cost [costs] shall be paid up to the maximum payment rate pursuant to [rates listed in] subparagraph 2 of this paragraph; or

2. If free or low-cost transportation that meets the needs of the individual is unavailable, a direct payment shall be made to the individual per month as follows:

- a. Nine (9) dollars for less than four (4) days per month;
 - b. Thirty-five (35) dollars for four (4) to sixteen (16) days per month; or
 - c. Sixty (60) dollars for seventeen (17) or more days per month.
- (c) For a special circumstance, as determined by the cabinet, when the actual transportation cost exceeds [costs exceed] the maximum payment rate [rates] in paragraph (b) of this subsection, if approved by the cabinet, the actual negotiated rate not to exceed \$100 per month may be paid.

(d) A payment [Payments] shall be made pursuant to [as specified in] 921 KAR 2:050.

(2) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, a transportation payment [payments] shall be provided for the period of up to:

- (a) [Up to] Two (2) weeks prior to the scheduled start of component activity; and
- (b) [Up to] One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction [Restrictions] on Authorization of a Transportation Payment. A payment [Payments, Payments] shall not be made if:

- (1) Appropriate verification is not returned by the end of the month prior to the month in which the cost will be incurred;
- (2) The participant is penalized for noncompliance with a Kentucky

Works activity, pursuant to [activities, as specified in] 921 KAR 2:370.

Section 6. Transportation Service [Services] in a Regional Capitated Transportation Network. Initially in limited areas until statewide implementation is completed, the transportation service shall be provided pursuant to 921 KAR 2:018, ~~Section 2 and 603 KAR 7:080~~.

Section 7. Other Supportive Services [in Kentucky Works Components]. (1) Other supportive services shall be provided if necessary for participation in the approved Kentucky Works activity [activities] of:

- (a) Component preparation;
- (b) Component participation while the K-TAP case remains active;
- (c) A period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case if:

1. The case is not discontinued due to:
 - a. Fraudulent activity; or
 - b. Failure to comply with procedural requirements;
2. The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance; and

3. Total gross income of the benefit group, pursuant to 921 KAR 2:016, Section 1(2), is at or below 200 percent of federal poverty level, adjusted annually; or [Transitional extension];

(d) ~~[OJT participants discontinued from K-TAP, until the end of the component placement; or~~

(e) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except if [when] an item is required as a condition of being hired by the employer; or
2. Is employed.

(2) Other supportive services shall be approved by the cabinet. An item or service [Items and services] that shall be approved is [are] the purchase of an item or service needed by the K-TAP recipient for participation in the Kentucky Works activity, as determined by the cabinet.

(3) Other supportive services shall be a cumulative limit of \$600 in a twelve (12) month period, beginning with the first day of the month in which the appropriate verification is issued.

(4) A payment may be authorized for an eligible parent or other adult included as a specified relative pursuant to Section 10 of 921 KAR 2:006.

(5) A penalized or [and] sanctioned K-TAP ineligible adult is [adults are] not eligible for other supportive services.

(6) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned individual who later cures the penalty. After the parent or other adult cures the penalty or sanction, an eligible expense [eligible expenses] may be authorized.

(7) Except pursuant to [as allowed by] Section 8 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 8. Allowable Medical Service or Item. If non-TANF funding is used and as long as funding is available, the purchase of the following item or service shall be allowed for a K-TAP recipient, if needed for participation in the Kentucky Works activity and not reimbursable through Medicaid, as determined by the cabinet and limited to:

- (1) Eyeglasses or corrective lens;
- (2) Dentures;
- (3) Hearing aids; and
- (4) Medical service or item required as a condition of employment.

Section 9. Car Repairs. (1) A car repair expenditure [Car repairs] shall be provided if necessary for participation in the approved Kentucky Works activity [activities] of:

- (a) Component preparation;
- (b) Component participation, including unsubsidized employment while the K-TAP case remains active; or
- (c) A period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case if:

1. The case is not discontinued due to:
 - a. Fraudulent activity; or

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b. Failure to comply with procedural requirements:

2. The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance; and

3. Total gross income of the benefit group, pursuant to 921 KAR 2:016, Section 1(2), is at or below 200 percent of federal poverty level, adjusted annually [Transitional extension; or

(d) OJT participants discontinued from K-TAP, until the end of the component placement].

(2) Car repair expense [expenses] shall meet the following criteria to be considered for payment:

(a) Car repair that [which] makes the car functional;

(b) Property tax on the [taxes on] vehicle;

(c) Vehicle registration;

(d) Licenses fee [fees];

(e) Liability insurance to drive a vehicle; and

(f) Other car expense needed by the K-TAP recipient that [which] would allow participation in the Kentucky Works activity, as determined by the cabinet.

(3) A car repair expenditure [All car repair expenditures] listed in subsection (2) of this section shall require:

(a) An estimate of the cost; and

(b) Approval by the cabinet.

(4) A [All] auto repair work shall be completed by a garage. [garages;]

(5) Prior to approval of a car repair expenditure [car repair expenditures], the cabinet shall verify the participant owns the vehicle.

(6) The payment maximum for total car repair expenditures shall be up to a maximum of \$500 per year per eligible family.

Section 10. Short-term Training. A fee for a short-term training program shall be eligible for payment for a K-TAP recipient if the training program is:

(1) [Is] Not eligible for federal financial aid; and

(2) [Is] Likely to lead to paid employment and is in accordance with the participant's Transitional Assistance Agreement, form KW-202, "K-TAP Transitional Assistance Agreement", as determined by the cabinet.

Section 11. Other Fees. (1) The following fee payment [payments] may be made for an eligible recipient:

(a) Registration fee [fees];

(b) Financial aid application fee [fees];

(c) Testing fee [fees];

(d) Application fee [fees] required by a vocational school [schools] for a specified program [programs];

(e) Liability insurance fee [fees];

(f) Copy of records;

(g) Activity fee [fees] if mandated by the institution; or [and]

(h) Other required fee [fees].

(2) Other fees shall not exceed \$200 per [each] payment.

Section 12. Work Incentive Bonus. (1) A job retention bonus of \$250 shall be paid to a K-TAP adult who:

(a) Obtains full-time unsubsidized employment that [which] shall be at least thirty (30) hours per week at no less than the federal minimum wage;

(b) Reports and provides timely verification of the wages;

(c) Remains K-TAP eligible;

(d) Maintains employment for at least ninety (90) days; and

(e) ~~At the end of the ninety (90) day period, requests the bonus within thirty (30) days:~~

(f) The work incentive bonus shall be limited to one (1) time only during the lifetime of the K-TAP adult.

(2) A job retention bonus of \$500 shall be paid to an adult who:

(a) Becomes ineligible for K-TAP with [due to] reported earnings;

(b) Obtains and maintains full-time unsubsidized employment that [which] shall be at least thirty-five (35) hours per week at no less than the federal minimum wage;

(c) Reports and provides timely verification of the wages;

(d) Maintains continuous employment for at least ninety (90) days; and

(e) At the end of the ninety (90) day period:

1. Requests a bonus within thirty (30) days of the end of the ninety (90) day period; and

2. Provides the cabinet with a current mailing address.

(f) If the adult described in paragraph (a) of this subsection maintains continuous employment for 180 days an additional \$500 shall be paid, if requested.

(g) If the adult described in paragraph (a) of this subsection maintains continuous employment for 270 days an additional \$500 shall be paid, if requested.

(h) The work incentive bonus for an adult discontinued from K-TAP as a result of earnings shall be limited to three (3) payments of \$500 during the lifetime of the adult.

(3) A K-TAP applicant or recipient shall be advised of the work incentive bonuses at the time of application, at [each] recertification and through periodic mailings that remind them of incentives that are available.

(4) A post-K-TAP recipient eligible for the work incentive bonus during the transitional extension period shall not be required to meet the at or below 200 percent gross income limit pursuant to Section 1(13)(c) of this administrative regulation.

Section 13. Educational Bonus. (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies:

(a) Receiving a:

1. ~~(a)~~ High school diploma;

2. ~~(b)~~ GED certificate; or

3. ~~(c)~~ Postsecondary school certificate or degree; or

(b) Graduating from English as a second language class.

(2) A short-term training program [programs] shall not qualify for postsecondary education.

(3) A K-TAP applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:

(a) During ~~at the time of~~ application;

(b) At [each] recertification; and

~~(c) Through periodic mailings [that remind them of incentives that are available].~~

Section 14. Home Mortgage Assistance. (1) As long as funding is available, an employed former K-TAP recipient may be provided the opportunity to receive home mortgage assistance. To be eligible for home mortgage assistance an employed former K-TAP recipient discontinued from K-TAP for at least twelve (12) months shall be meet the following criteria:

(a) The family shall be in a crisis situation, as determined by the Kentucky Housing Corporation; and

(b) Total gross income of the family shall not exceed the lower of:

1. At or below 200 percent of federal poverty level, adjusted annually, for the appropriate family size; or

2. Kentucky Housing Corporation's Family Self-sufficiency Program guideline.

(2) If due to loss of employment for no longer than four (4) months and an eligible former K-TAP recipient misses a house payment, short-term assistance may be received.

(3) Assistance may be received for an eligible recipient for:

(a) An emergency repair to the home; or

(b) Credit counseling.

(4) The amount of assistance shall be based on need according to Kentucky Housing Corporation's determination.

Section 15. Assistance with Access to a Vehicle. (1) In limited areas and as long as funding is available, a K-TAP recipient may be provided the opportunity to lease or buy a vehicle at a subsidized rate.

(2) To qualify, the K-TAP recipient shall be participating in one (1) of the following Kentucky Works components:

(a) Full-time employment;

(b) Training activity leading to employment; or

(c) Last year of postsecondary education.

Section 16. Restrictions on Authorization of Supportive Service Payments. A payment [Payments] shall not be made for the period

during which:

- (1) Verification is not returned; or
- (2) The participant is penalized for noncompliance with a Kentucky Works activity, pursuant to [activities, as specified in] 921 KAR 2:370, or is ineligible.

Section 17. [15:] Hearings and Appeals. An applicant or recipient of benefits pursuant to a program [Applicants or recipients of benefits under programs] described herein who is [are] dissatisfied with an [any] action or inaction on the part of the cabinet shall have the right to a hearing pursuant to [under] 921 KAR 2:055.

Section 18. [16:] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) PA-32, "Authorization for Supportive Services Payments, edition 5/00 [8/97]";
- (b) PA-33, "Verification of Participation in Education or [f] Training Activity [-and-Transportation], edition 5/00 [1/98]"; and
- (c) PA-33N, "Second Notice for Verification of Kentucky Works Participation [Verification of Education/Training, and Transportation], edition 5/00" [1/98].

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 9, 2000

FILED WITH LRC: February 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2000, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2000, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). As of October 1999, approximately 39,880 families in Kentucky received K-TAP, including 25,751 adults and 66,014 children. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was not received as a result of the publication of the Notice of Intent for November 30, 1999; however, written comments were received by close of business on November 30, 1999. No written comments were received regarding cost of living and employment in the geographical area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A request for a hearing was not received as a result of the publication of the Notice of Intent for No-

vember 30, 1999; however, written comments were received by close of business on November 30, 1999. No written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP or post-K-TAP recipients eligible for services will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below:

a. The supportive services for eligible post-K-TAP recipients are extended to twelve (12) months with gross income at or below 200 percent of federal poverty level. It is not known at this time the types of supportive services post-K-TAP recipients will be accessing and the fiscal impact to the agency is indeterminable. However, there should be sufficient TANF funds to cover these expenditures.

b. Allowing the exception to the at or below 200 percent gross income limit for post-K-TAP recipients eligible for the work incentive bonuses is clarification of policy. Federal funds are used for bonuses received for recipients at or below 200 percent of poverty. Beginning October 1, 1999, state funds was used for post-K-TAP recipients who have gross income over 200 percent of federal poverty level who receive a work incentive bonus. This information will be tracked so appropriate funds are correctly used. It is projected the cost impact to the agency will be minimal.

c. The exception that had prohibited employed K-TAP recipients from receiving a direct transportation payment is removed to coincide with policy established for employed K-TAP recipients eligible for services in the regional capitated transportation network. The need for this direct payment has been reduced due to statewide implementation of the transportation network.

d. Allowing housing assistance for an employed former K-TAP recipient will be indeterminable fiscal impact to the agency; however, there are sufficient TANF funds to cover these expenditures.

e. Providing a K-TAP recipient, in limited areas, an opportunity to lease or buy a vehicle at a subsidized rate will be a very limited fiscal impact to the agency since transportation services are provided by a regional capitated transportation network statewide and should only be in an area where access to transportation service is not readily available.

f. Allowing the education bonus be paid to a K-TAP recipient graduating from English as a second language class will be minimal fiscal impact to the agency due to the small number of K-TAP recipients who would be accessing this service.

g. Changing all forms to correct the name of the division and other changes as the result of the reorganization of the Cabinet for Families and Children would have minimal fiscal impact to the agency; however, printing costs were budgeted with the current program dollars therefore no additional impact.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: Same as number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds (TANF block grant funds) and state funds

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

(a) Geographical area in which administrative regulation will be implemented: A request for a hearing was not received as a result of the publication of the Notice of Intent for November 30, 1999; however, written comments were received by close of business on November 30, 1999. No written comments were received regarding

economic impact in the geographical area in which the administrative regulation will be implemented.

(b) Kentucky: A request for a hearing was not received as a result of the publication of the Notice of Intent for November 30, 1999; however, written comments were received by close of business on November 30, 1999. No written comments were received regarding economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is required to conform with Federal TANF regulations effective October 1, 1999.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in final federal TANF regulations issued on April 12, 1999, effective October 1, 1999.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not comply with the final federal TANF regulations issued on April 12, 1999, effective October 1, 1999. TANF Block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not comply with federal requirements found in 45 CFR Parts 260 through 265. Prior to the issuance of the final federal TANF regulations, states were allowed to operate programs under a reasonable interpretation of the federal TANF statutes as a result of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, this standard only applies until the effective date of the final TANF regulations which is October 1, 1999. At that time, states are required to implement changes in the programs to comply with these federal regulations. If these changes are not implemented, penalties and loss of federal funds may result. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: A Statement of Consideration for the Notice of Intent was filed with LRC on December 21, 1999, as a result of written comments received by November 30, 1999.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR Parts 260 through 265
2. State compliance standards. KRS 205.200; 205.2003
3. Minimum or uniform standards contained in the federal mandate. Federal regulations contain standards regarding the definition of "assistance" funded with TANF federal funds.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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

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

RELATES TO: KRS 205.200(7), 205.2003, 45 CFR Parts 98.2, 260-265, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), (7), 205.2003, 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to [under] 42 USC 601 et seq. KRS 205.2003 requires that a work program for a recipient [recipients] of Kentucky Transitional Assistance Program be prescribed by administrative regulations. This administrative regulation sets forth the technical requirements of the Kentucky Works Program [participants as they relate to eligibility for receiving assistance from the Kentucky Transitional Assistance Program].

Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(2) "Appropriate child care" means an eligible child care pursuant to 45 CFR Part 98.2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" means the definition of "assistance" pursuant to 45 CFR 260.31.

(5) [(2)] "Cabinet" means the Cabinet for Families and Children.

(6) [(3)] "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(7) [(4)] "Conciliation" means a process in which a participation problem [problems] in the Kentucky Works Program can be resolved.

(8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) [(5)] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for a child [children] pursuant to 921 KAR 2:006, Section 1.

(10) [(6)] "Kentucky Works" means a program that [which] assists;

(a) A recipient [recipients] of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) A former K-TAP recipient with a job retention service.

(11) "Reasonable distance" means the distance customarily available within a locality.

(12) "Unsuitable of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the Commonwealth.

(13) [(7)] "Vocational education" means a training program that [which] prepares the individual for employment.

(14) [(8)] "Wage supplementation" means a component in which an employer hires a participant and receives [employers hire participants and receive] reimbursement from the cabinet for a portion of wages paid to the participant.

Section 2. Program Participation. (1) An [All] adult and teenage parent Kentucky Transitional Assistance Program recipient [recipients] shall be required to participate in the Kentucky Works Program unless the recipient meets the exception criteria in Section 3 of this administrative regulation;

(2) An [All] adult Kentucky Transitional Assistance Program recipient who does [recipients who do] not meet the exception criteria in Section 3 of this administrative regulation shall be required to participate in the Kentucky Works Program as follows:

(a) A one (1) parent household shall be required to participate in a specific activity pursuant to [listed in] paragraph (c) of this subsection

no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

1. Through September 30, 1999, twenty-five (25) hours per week; five (5) hours per week which may be satisfied through education activities defined in paragraph (c) 7, 8, and 9 of this subsection or in literacy or adult education.

2. On or after October 1, 1999, a minimum of thirty (30) hours per week; ten (10) hours per week that [which] may be satisfied through an education activity pursuant to [education activities defined in] paragraph (c) 7, and 8; and 9] of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:

1. Thirty-five (35) hours per week for one (1) parent with at least thirty (30) hours of the required thirty-five (35) hours per week in an activity pursuant to [specific activities listed in] paragraph (c) of this subsection; and

2. Twenty (20) hours per week for one (1) parent in a two (2) parent household with all twenty (20) hours per week in an activity pursuant to [specific activities listed in] paragraph (c) 1, 2, 3, 4, and 6 of this subsection if:

a. The family receives federally-funded child care assistance; and

b. An adult in the family is not disabled pursuant to 921 KAR 2:006; or

c. An adult is not needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006.

3. If the family does not receive federally-funded child care assistance, a minimum of thirty-five (35) hours per week shall be required for both parents combined.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) An activity [Specific activities] to be in compliance with the program participation requirement [requirements] in Kentucky Works shall include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service;

7. [Vocational education not to exceed twelve (12) months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

8.] Full-time enrollment progressing satisfactorily, as defined by the school, in postsecondary or vocational education not to exceed twenty-four (24) months and after that time coupled with work or work activity [activities] for the amount of hours per week pursuant to [specified in] paragraphs (a) and (b) of this subsection;

9. [9:] Satisfactory attendance at secondary school or equivalent in the case of a recipient who has not completed secondary school or equivalent coupled with work or work activity [activities] in the amount of hours per week pursuant to [specified in] paragraphs (a) and (b) of this subsection;

9. [10:] Provision of child care services to an individual participating in community service;

10. [11:] Based on the findings of the assessment, the [agency-or] cabinet designee and the participant may determine placement in a work preparation activity that [which] includes:

- a. Domestic violence counseling;
- b. Life skills training;
- c. A substance abuse program;
- d. Mental health counseling;
- e. Vocational rehabilitation;
- f. Literacy; and
- g. Adult education;

11. [12:] Wage supplementation, that [which] shall be available in limited areas and shall expand into additional areas until statewide implementation is complete;

12. [13:] Participation in a work program [work programs] approved by the cabinet; and

13. [14:] Participation in an activity [other activities] approved by the cabinet.

Section 3. Exceptions to Program Participation. (1) A Kentucky Transitional Assistance Program recipient who is a head of household, who has not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age shall be deemed to be engaged in work for a [any] month in a fiscal year if the recipient:

(a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(b) Participates in education that is directly related to employment for at least twenty (20) hours a week.

(2)(a) An adult Kentucky Transitional Assistance Program recipient shall not be required to comply with a program participation requirement [requirements] for up to twelve (12) months if the adult is an individual caring for a child who has not attained twelve (12) months of age;

(b) The twelve (12) months of exemption from a work participation requirement [requirements] shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

(3)(a) For a Kentucky Transitional Assistance Program recipient where compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence [or who is at risk of further domestic violence, as determined by the cabinet], compliance shall not be mandated;

(b) If a Kentucky Transitional Assistance Program applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 23(1).

(4) A Kentucky Transitional Assistance Program recipient shall be deemed to be engaged in work for a [any] month if the recipient is:

(a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month.

(5) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works pursuant to [listed in] Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or another entity designated by the cabinet shall make an assessment of the individual's employability;

(b) Other agencies shall assist in the assessment process as needed;

(c) The assessment shall include:

1. Consideration of basic skills;
2. Occupational skills; and
3. Concerns and other relevant factors.

(2) The self-sufficiency plan. Based on the findings of the assessment, the [agency-or] cabinet designee and participant shall jointly develop a self-sufficiency plan by completing the KW-202, K-TAP Transitional Assistance Agreement. This plan shall contain:

(a) An employment goal for the participant;

(b) A service [Services] to be provided by the cabinet [agency] (including child care);

(c) An activity [Activities] to be undertaken by the recipient to achieve the employment goal; and

(d) Other needs of the family.

(3) An adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:

(a) Under age eighteen (18);

(b) Age sixty (60) or over;

(c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to [as set forth in] Section 1(13) [(10)] of 921 KAR 2:016;

(d) Receiving benefits based on 100 percent disability;

(e) An individual who has received benefits based on 100 percent

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disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or

(f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a Kentucky Works participant;

(b) At the request of a service provider; or

(c) When a situation is identified that [which] could result in a penalty pursuant to [as specified in] Section 7 of this administrative regulation[)].

(2) The conciliation shall be conducted by the cabinet or contractor:

(a) During conciliation, the cabinet [agency] shall determine if an additional service is [additional services are] needed to assist with Kentucky Works participation.

(b) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, "Conciliation Contract".

(c) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 6. Excused from Penalties. (1) A [K-TAP] recipient shall be excused from a penalty [penalties] for failure to comply with the Kentucky Works Program, pursuant to [as specified in] Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:

1. Cannot locate appropriate child care;

2. Cannot locate child care at a reasonable distance from home;

3. Determines the unsuitability of informal child care; or

4. Cannot locate affordable child care arrangements; [caring for a child under age six (6) and child care is unavailable, as determined by the cabinet];

(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the applicant or recipient;

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e) The individual is unable to engage in employment or training for a mental or physical reason [reasons] as verified by the cabinet;

(f) Illness of another household member requiring the presence of the participant as documented by medical evidence or by a reliable information source, [from other sources] as verified by the cabinet;

(g) The participant is temporarily incarcerated or institutionalized for thirty (30) days or less;

(h) The cabinet [agency] determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;

2. Race;

3. Sex;

4. Color;

5. Disability;

6. Religious belief [beliefs];

7. National origin; or

8. Political belief [beliefs];

(i) Work demand or condition renders [demands or conditions render] continued employment unreasonable including [-such as]:

1. Consistently not being paid on schedule; or

2. The presence of a risk to the individual's health or safety;

(j) Wage rate is [rates are] decreased subsequent to acceptance of employment;

(k) The participant accepts a better job that [which], because of a circumstance [circumstances] beyond the control of the recipient, does not materialize;

(l) The work activity site is so far removed from the home that

commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to an individual's circumstance [individual circumstances].

Section 7. Penalties. (1) When a Kentucky Transitional Assistance Program recipient fails to comply with a requirement [the requirements] of the Kentucky Works Program, he shall be subject to a penalty [penalties]. Failure to comply shall be found when the participant:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity [required activities], including:

1. An assessment interview;

2. An assessment; or

3. Self-sufficiency plan development including completion of the Transitional Assistance [Assessment] Agreement, KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity pursuant to [the program activities as defined in] the Transitional Assistance [Assessment] Agreement, KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Unless an exception in Section 4(3) of this administrative regulation applies, fails to register for work.

(2)(a) Except for a requirement [requirements] listed in paragraph (b) of this subsection, a K-TAP recipient who has failed to comply with a Kentucky Works requirement [requirements] without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception pursuant to [in] Section 4(3) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

(b) Assistance to the benefit group shall be discontinued if the K-TAP recipient, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep appointment for an assessment interview; or

2. Complete an assessment, pursuant to Section 4 of this administrative regulation.

(c) The penalty in paragraph (a) or (b) of this subsection shall continue to be applied until the participant complies with a program requirement [program requirements].

(d) The penalty in paragraph (a) or (b) of this subsection shall not be applied until after a conciliation procedure is [conciliation procedures are] conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program [Applicants or recipients of benefits under programs] described herein who is [are] dissatisfied with an [any] action or inaction on the part of the cabinet shall have the right to a hearing pursuant to [under] 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) A cost [Costs] incurred by the training site agency because of participation in WEP shall not be reimbursed.

(2) A WEP participant shall not be involved in partisan politics.

(3) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(4) A WEP participant shall not infringe upon the promotional opportunity [opportunities] of a currently employed individual.

(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

(a) Race;

(b) Color;

(c) Religion;

(d) Sex;

(e) National origin;

(f) Age;

(g) Disability; or

(h) Political belief or affiliation;

(6) A training site agency shall:

(a) Complete a Department for Community Based Services questionnaire [questionnaires] relating to the operation of the training site agreement;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including [such as] a reduction of the:

1. Hours of nonovertime work;
2. Wages; or
3. Employment benefits;

(c) Comply with 42 USC 12101 et seq. [the Americans with Disabilities Act];

(d) Shall report a personnel problem to the departmental representative designated by the cabinet [department];

(e) Shall maintain accurate time and attendance records for a [each] WEP participant;

(f) Verify time and attendance records for a [each] WEP participant on Form PA-33, "Certification of Education or Training, Child Care and Transportation" that will be submitted by a WEP participant;

(g) Shall grant access for the Department for Community Based Services to the training site during working hours to counsel a participant [participants] and to monitor the site;

(h) Shall immediately report an injury to the designated representative;

(i) Shall conduct an investigation [investigations] and submit a report [reports] upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Except as authorized by law, or in writing by a WEP participant, shall maintain the confidentiality of information[, in any form,] provided by or about a WEP participant who seeks or receives a service pursuant to [services under] the Training Site Agreement;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation [losses, claims, expenses, actions, causes of action, costs, damages, and obligations] arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant [agents, employees, licensees, invitees, or WEP participants] that results in injury to a person, or damage or loss [damages or losses] relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;
2. New task [tasks] after mastery of a [each] skill; and
3. Adequate participation instruction and supervision at all times.

(7) A training site agency shall:

(a) Provide the participant [participants] a safe training place;

(b) Assure a participant, engaged in an activity not covered pursuant to 29 USC 651 et seq., is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is [that if participants are engaged in activities that are not covered under the Occupational Safety and Health Act of 1970, as amended, they shall not be required or permitted to be trained, or receive services, in buildings, or surroundings, or under training conditions that are] unsanitary, hazardous, or dangerous to the health and safety of the participant [participants]; and

(c) Provide adequate material to complete a [each] training activity in a safe environment;

(8) A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

(9) A training site agency shall sign a "WEP Training Site Agreement" with the cabinet containing a statement of:

(a) [Each of] The conditions established by subsections (1) through (8) of this section; and

(b) The period covered by the agreement, including the required weekly number of hours of participation [required each week].

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) PA-33, "Verification of Participation in Education or Training Activity [and Transportation] edition 5/00 [1/98]";

(b) PA-33D, "Child's Certification of School Enroll-

ment/Attendance, edition 5/00 [8/97]";

(c) PA-218A, "New Chance Referral, edition 5/00 [4/97]";

(d) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98";

(e) KW-105, "Kentucky Works Referral Form (Participant), edition 5/00 [6/97]";

(f) KW-200, "Kentucky Works Assessment Form, edition 5/00 [5/97]";

(g) KW-202, "K-TAP Transitional Assistance Agreement, edition 5/00 [4/97]";

(h) KW-204, "Conciliation Contact, edition 5/00 [3/98]";

(i) KW-205, "Conciliation Results, edition 5/00 [3/98]";

(j) KW-211, "Noncompliance Contact, edition 5/00 [5/97]";

(k) KW-230, "Wage Supplementation Program Participant Agreement, edition 4/99";

(l) KW-240, "Work Experience Training Program Participant Agreement, edition 5/00 [1/98]";

(m) KW-244, "WEP Training Site Agreement Amendment, edition 5/00 [1/98]";

(n) KW-245 "Notice of WEP Discontinuance, edition 5/00 [1/98]";

(o) KW-246 "WEP Referral Form, edition 5/00 [1/98]";

(p) KWET-241, "WEP Training Site Agreement, edition 9/98".

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 9, 2000

FILED WITH LRC: February 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2000, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2000, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). As of October 1999, approximately 39,880 families in Kentucky received K-TAP, including 25,751 adults and 66,014 children. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing or written comments were received as a result of 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 comment received: No requests for a hearing or written comments were received as a result of 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: The individuals who are applicants or recipients of K-TAP, who are required to comply with Kentucky Works provisions will have no additional compliance, reporting or paperwork requirements due to the amendments to this regulation.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: No additional fiscal impact is anticipated to the agency due to these amendments.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: See impact in number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(b) Kentucky: No requests for a hearing or written comments were received as a result of the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the amendments to the regulation are required to comply with federal regulations issued on April 12, 1999.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in final TANF federal regulations effective October 1, 1999.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not comply with the final TANF federal regulations issued on April 12, 1999. TANF Block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not comply with federal requirements found in 45 CFR Parts 260 through 265, effective October 1, 1999. Prior to the issuance of the final federal TANF regulations, states were allowed to operate programs under a reasonable interpretation of the TANF federal statutes as a result of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, this standard only applies until the effective date of the final TANF regulations which is October 1, 1999. At that time, states are required to implement changes in the programs to comply with these federal regulations. If these changes are not implemented, penalties and loss of federal funds may result. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR Parts 260 through 265

2. State compliance standards. KRS 205.2003

3. Minimum or uniform standards contained in the federal mandate. Federal regulations contain standards regarding the definition of "assistance" funded with TANF federal funds.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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

921 KAR 2:500. Family Alternatives Diversion (FAD).

RELATES TO: KRS 205.200(2), 205.2003

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), 42 USC 601 et seq., 1397 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the block grant program funded under 42 USC 601 et seq. and 42 USC 1397 et seq. KRS 194B.050(1) authorizes the Cabinet for Families and Children to adopt administrative regulations necessary to implement programs mandated by federal law or to qualify for receipt of federal funds. This administrative regulation sets forth the requirements for the Family Alternatives Diversion Program and Employment Retention Assistance.

Section 1. Definitions. (1) "Benefit group" means a K-TAP eligible benefit group defined in 921 KAR 2:006, Section 1.

(2) "Cabinet" means Cabinet for Families and Children.

(3) "ERA" means Employment Retention Assistance.

(4) [(3)] "FAD" means the Family Alternatives Diversion Program.

(5) [(4)] "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for children who are deprived of parental support or care pursuant to 921 KAR 2:006.

(6) [(5)] "Overpayment" means a FAD or ERA benefit received by an individual who:

(a) After an initial determination of eligibility is determined to be ineligible for the program and erroneous benefits were received by the individual; or

(b) Is determined eligible for the program and refuses to apply the benefit to the provider of the service needed to resolve the short-term emergency as indicated by the individual at the time of the application.

Section 2. Eligibility for Family Alternatives Diversion (FAD). (1) To qualify for FAD benefits, the benefit group as defined in Section 1(1) of this administrative regulation shall:

(a) Meet monthly income and resource requirements in the month of application pursuant to 921 KAR 2:016, Sections 2, 3(1), 4(1), and 6;

(b) Except for the thirty (30) day unemployment requirement for unemployed parent cases pursuant to 921 KAR 2:006, Section 9(6)(e) that [which] shall not be required, meet technical requirements of K-TAP pursuant to 921 KAR 2:006;

(c) Not be currently receiving ongoing K-TAP benefits;

(d) Have a verified short-term need to include:

1. Transportation;
2. Child care;
3. Child support;
4. Housing; or
5. Employment related problem.

(e) Be determined by the cabinet to be self-supporting if the short-term need is met.

(2) The Transitional Assistance Self-assessment Survey Form, FA-1, shall be used to screen applicants for K-TAP and to determine eligibility for FAD along with the FA-2, Family Alternatives Assessment Form.

(3) The cabinet shall determine through the screening process in subsection (2) of this section, if a potential K-TAP eligible benefit group may be an eligible family to receive FAD benefits. The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits. FAD shall be utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.

(4)(a) The benefit group's countable gross income shall include the earned and unearned income pursuant to 921 KAR 2:016, Sections 3 and 4.

(b) The benefit group's gross income shall be computed using the best estimate of income for the month of application pursuant to 921 KAR 2:016, Section 9.

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP pursuant to 921 KAR 2:016, Section 8(2)(b).

(d) If the benefit group's total gross earned and unearned income exceed the maximum gross income limit for the appropriate benefit group size, pursuant to 921 KAR 2:016, Section 8(2), the family shall not be eligible for a FAD payment.

(5)(a) The FAD eligibility period for an approved FAD application shall be a three (3) consecutive month period beginning with the month of issuance of the first FAD check or voucher.

(b) One (1) or more checks up to \$1,500 may be issued to resolve an emergency during the three (3) month eligibility period.

(c) One (1) approval during the three (3) month eligibility period shall be necessary to issue one (1) or more checks.

(d) An individual shall not be approved for FAD more than once during a twelve (12) month period.

Section 3. Authorization of a FAD Payment. (1) The amount of the eligible FAD payment shall be issued in one (1) or more checks or vouchers to:

- (a) A vendor;
 - (b) A two (2) party check to the eligible FAD benefit group and vendor; or
 - (c) The eligible FAD benefit group if the vendor refuses to:
 1. Accept a payment or voucher; or
 2. Provide the cabinet with a tax identification number.
- (2) Total payments during the three (3) month FAD eligibility period shall not exceed \$1,500.

Section 4. Coordination with K-TAP and Other Benefit Programs. (1) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:

- (a) Abuse or neglect of a child, as determined by the cabinet; or
- (b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent as determined by the cabinet.

(2) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:

- (a) Food stamps;
- (b) Medicaid; and
- (c) Child care.

(3) For a FAD eligible benefit group, referral [referrals] for other services shall be made as needed to:

- (a) Other agencies including:
 1. The Division of Child Support;
 2. The Cabinet for Health Services; and
 3. The Department for Employment Services; or

(b) Charitable organizations.

(4) A referral shall be made for other services, as needed, offered through the Department for Employment Services or other contractors to the FAD eligible benefit group to include the following services:

- (a) Job search;
- (b) Job readiness assessment; and
- (c) Life skills.

Section 5. Eligibility for Employment Retention Assistance (ERA). (1) To assist in maintaining self-sufficiency, ERA shall be available to a family if the family:

- (a) Contains a parent who has been discontinued from K-TAP with [due to] earnings;
- (b) Contains a parent who is currently employed when services are requested;
- (c) Has total gross income at or below [under] 200 percent of federal poverty level;
- (d) Requires a service or item which would stabilize the family and allow continued employment due to a short term need; and
- (e) Has not received an ERA payment anytime during the previous twelve (12) months.

(2) The ERA eligibility period for a discontinued K-TAP recipient shall be for a twelve (12) [a three (3) consecutive calendar] month period beginning with the effective date of discontinuance from K-TAP.

(3) The eligible ERA payment shall be issued to the eligible family.

(4) One (1) or more checks up to a total of \$1,500 may be issued to resolve an emergency or emergencies during the twelve (12) [three (3)] month eligibility period.

(5) A benefit group shall not be prohibited from receiving K-TAP following the twelve (12) [three (3) calendar] month eligibility period for ERA if all K-TAP eligibility requirements are met.

(6) A benefit group shall not be eligible for ERA and K-TAP or FAD concurrently.

Section 6. Overpayments. (1) A FAD or ERA overpayment, as defined in Section 1 of this administrative regulation including assistance paid pending hearing decision [decisions], shall be recovered from the [:

- (a) ~~The~~ claimant[;
 - (b) ~~The overpaid benefit group; or~~
 - (c) ~~A benefit group of which a member of the overpaid benefit group has subsequently become a member].~~
- (2) An overpayment shall be recovered through:
- (a) Repayment by the individual to the cabinet; or
 - (b) Civil action in the court of appropriate jurisdiction after:
 1. Notice and an opportunity for a fair hearing pursuant to [as specified in] 921 KAR 2:055 is given; and
 2. The administrative and judicial remedy [remedies] have been exhausted or abandoned.

Section 7. Hearing Rights. Hearing rights for FAD and ERA shall be the same as hearing rights for a K-TAP recipient pursuant to 921 KAR 2:055.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) FA-1, "Transitional Assistance Self-assessment, edition 5/99";
 - (b) FA-2, "Family Alternatives Assessment, edition 5/99".
- (2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 14, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative

VOLUME 26, NUMBER 9 – MARCH 1, 2000

regulation shall be held on March 21, 2000, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2000, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are families who are potentially eligible for Kentucky Transitional Assistance Program (K-TAP) who are not currently receiving ongoing K-TAP benefits who only need assistance to meet a short-term need instead of on-going assistance. As of October 1999, there were a total of 39,880 families, 25,751 adults, and 66,014 children who received K-TAP.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of living and employment in the geographical area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of FAD or ERA will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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 funds - Social Services Block Grant.

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

(a) Geographical area in which administrative regulation will be implemented: No requests for a public hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: No requests for a public hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were considered to fund the

program under TANF; however, due to the 60 month time limitation for a program funded under 42 USC 601 et seq., this program currently will be funded under the Social Services Block Grant.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: The Family Alternative Diversion (FAD) Program will provide temporary assistance to families discontinued from K-TAP to prevent the parent from losing employment and to remain self-sufficient.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: The Family Alternative Diversion assistance is available to a potentially K-TAP eligible family who only requires assistance to meet a short term need to resolve an emergency. This program will allow the adult to remain employed by resolving the emergency, stabilize the family and divert the family from welfare dependency. A detrimental effect would occur if a family did not have a source of assistance that would provide temporary help to purchase an item or service that would stabilize the family and prevent the parent from losing employment. Employment Retention Assistance will provide assistance to help the post-K-TAP family maintain self-sufficiency.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 15, 2000

KENTUCKY BOARD OF PHARMACY
(New Administrative Regulation)

201 KAR 2:230. Special limited pharmacy - central refill pharmacy.

RELATES TO: KRS 217.015(5)(a), 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label and distribute refill prescriptions to pharmacies in the Commonwealth.

Section 1. Definition. A central refill pharmacy means a pharmacy located in the Commonwealth that provides packaging, labeling and delivery of a refill prescription product to another pharmacy in the Commonwealth for the purpose of the refilling of a valid prescription.

Section 2. The central refill pharmacy must:

(1) Either have a written contract with the pharmacy which has custody of the original prescription authorization for refill dispensing or be under common ownership with that pharmacy;

(2) Prepare the label for the refill prescription product which clearly identifies the name and address of the pharmacy preparing the product for refill dispensing and the name and address of the pharmacy that will receive the prepared product for dispensing to the patient;

(3) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the preparation of the refilled prescription product, including:

(a) The name of the pharmacist who verified the accuracy of the refilled prescription product;

(b) The name of the pharmacy preparing the refilled prescription product; and

(c) The name of the pharmacy to which the prepared refill prescription product is delivered;

(4) Provide the originating pharmacy with written information that describes how a patient may contact the central refill pharmacy if the patient has any questions about the preparation of the prescription refill; and

(5) Be responsible for ensuring that the order has been properly prepared and verified by a pharmacist.

Section 3. The pharmacy to which a prepared prescription refill product is delivered must:

(1) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the receipt and dispensing of the centrally refilled prescription product, including:

(a) The name of the pharmacist who verified the accuracy of the refilled prescription product prior to its dispensing; and

(b) The name of the pharmacy preparing the refilled prescription product;

(2) Be responsible for ensuring that the refill has been properly prepared, packaged and labeled;

(3) Provide the patient with written information that described how a patient may contact either the central refill pharmacy if the patient has any questions about the preparation of the prescription refill or the dispensing pharmacy if the patient has any questions about the use of the medication; and

(4) Be responsible for adherence to the requirements of 201 KAR 2:210.

DAVID L. JAQUITH, President
CHERYL LALONDE-MOONEY, JD, Assistant Attorney General

APPROVED BY AGENCY: December 15, 1999

FILED WITH LRC: February 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 9:15 a.m. on March 28, 2000, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 21, 2000, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: Any pharmacy that chooses to utilize a central refill pharmacy.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: Review and processing of initial license applications.

2. Second and subsequent years: Processing of renewal applications.

(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: Licensure and renewal applications.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit as a result of the adoption of this administrative regulation since it will permit pharmacies to utilize technology to more efficiently deliver prescriptions, thereby enabling the pharmacist to engage in counseling.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could limit the potential usefulness of an efficient processing system that would facilitate a pharmacist's

efforts to improve drug therapy outcomes through counseling and drug therapy management.

(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:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons that avail themselves of this administrative regulation are treated identically by this administrative regulation.

**KENTUCKY BOARD OF DENTISTRY
(New Administrative Regulations)**

201 KAR 8:286. Repeal of 201 KAR 8:285.

RELATES TO: KRS 331.220(1), (4)

STATUTORY AUTHORITY: KRS 214.615(2), 313.080(1), (2), 313.305

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 8:285 is no longer required because 201 KAR 8:140, Continuing education compliance, has preempted this administrative regulation for both dentists and dental hygienists.

Section 1. 201 KAR 8:285, Continuing education compliance, is hereby repealed.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: Approximately 2800 dentists and 1500 dental hygienists.

(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: NA

(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: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: NA

(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: NA

(b) Kentucky: NA

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: NA

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

(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: NA

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

**KENTUCKY BOARD OF DENTISTRY
(New Administrative Regulation)**

201 KAR 8:301. Repeal of 201 KAR 8:300.

RELATES TO: KRS 313.220(1), (4)

STATUTORY AUTHORITY: KRS 313.260

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 8:300 is no longer required because KRS 313.307 has been repealed.

Section 1. 201 KAR 8:300, County registration; hygienists, is hereby repealed.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: Approximately 1500 dental hygienists.

(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: NA

(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: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: NA

(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: NA

(b) Kentucky: NA

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

(8) Assessment of expected benefits: Will relieve dental hygienists from sending to the dental board a form from county registration.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: NA

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

(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: NA

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

KENTUCKY BOARD OF DENTISTRY (New Administrative Regulation)

201 KAR 8:381. Repeal of 201 KAR 8:380.

RELATES TO: KRS 313.220(1), (4)

STATUTORY AUTHORITY: KRS 313.220(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 8:380 is no longer required because rural Kentucky dental scholarships are no longer authorized by statute as KRS 211.450 and 211.440(3) have been repealed.

Section 1. 201 KAR 8:380, Repayment contract; scholarship, is hereby repealed.

GARY MUNSIE, Executive Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: February 8, 2000

FILED WITH LRC: February 9, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on March 24, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the

board in writing by March 17, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Phone: (502) 423-0573; Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie, Executive Director

(1) Type and number of entities affected: 2800 dentists.

(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: NA

(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 fee regulation will have a negligible financial impact on the cost of doing business for dentists as it increases fees for a small group that only administer anesthesia.

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body: Will bring regulations up to date

(a) Direct and indirect costs or savings: NA

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements: NA

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: NA

(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: NA

(b) Kentucky: NA

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

(8) Assessment of expected benefits: NA

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: NA

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

(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: NA

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

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TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(New Administrative Regulation)

601 KAR 1:017. Repeal of 601 KAR 1:015 and 601 KAR 1:016.

RELATES TO: KRS 174.080, 189.222, 189.270, 189.273, 189.274

STATUTORY AUTHORITY: KRS 174.080, 189.222, 189.270, 189.273, 189.274

NECESSITY, FUNCTION, AND CONFORMITY: 601 KAR 1:015 and 601 KAR 1:016 are being repealed. These administrative regulations are being replaced by 601 KAR 1:018.

Section 1. The following administrative regulations are hereby repealed:

- (1) 601 KAR 1:015; and
- (2) 601 KAR 1:016.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel/Legislative Affairs

APPROVED BY AGENCY: February 10, 2000

FILED WITH LRC: February 14, 2000 at 1 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 21, 2000 at 9 a.m., local prevailing time in the State Office Building, Tenth Floor General Counsel Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by March 14, 2000. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 14, 2000. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on March 22, 2000. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: All persons who own or operate 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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(New Administrative Regulation)

603 KAR 5:076. Repeal of 603 KAR 5:075, 603 KAR 5:100, 603 KAR 5:105, 603 KAR 5:110, 603 KAR 5:112, 603 KAR 5:260, 603 KAR 5:270, and 603 KAR 5:330.

RELATES TO: KRS 189.222, 189.270, 189.2717

STATUTORY AUTHORITY: KRS 189.222, 189.270, 189.2717

NECESSITY, FUNCTION, AND CONFORMITY: 603 KAR 5:075, 603 KAR 5:100, 603 KAR 5:105, 603 KAR 5:110, 603 KAR 5:112, 603 KAR 5:260, 603 KAR 5:270, and 603 KAR 5:330 are being repealed. These administrative regulations are being replaced by 601 KAR 1:018.

Section 1. The following administrative regulations are hereby repealed:

- (1) 603 KAR 5:075;
- (2) 603 KAR 5:100;
- (3) 603 KAR 5:105;
- (4) 603 KAR 5:110;
- (5) 603 KAR 5:112;
- (6) 603 KAR 5:260;
- (7) 603 KAR 5:270; and
- (8) 603 KAR 5:330.

ED LOGSDON, Commissioner
JAMES C. CODELL, III, Secretary
TODD SHIPP, Office of General Counsel/Legislative Affairs
APPROVED BY AGENCY: February 10, 2000
FILED WITH LRC: February 14, 2000 at 1 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 21, 2000 at 8 a.m., local prevailing time in the State Office Building, Tenth Floor General Counsel Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by March 14, 2000. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by March 14, 2000. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on March 22, 2000. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: All persons who own or operate 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.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Behavioral Health Programs (New Administrative Regulation)

907 KAR 3:110. 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

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 and 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 abuse prevention service" means universal, selective or indicated prevention services in accordance with the requirements in Section 4 of this administrative regulation.

(8) "Substance abuse treatment service" means outpatient, intensive outpatient, day rehabilitation, case management or community-support services in accordance with the requirements in

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Section 4 of this administrative regulation.

(9) "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.

(10) "Therapeutic risk reduction protocol" means a behavior change regimen using research-based strategies which have been demonstrated to produce desired attitudinal or behavioral outcomes that halt progression toward substance dependency and reduce risk for other alcohol and drug related problems in specific targeted populations.

(11) "Triage" means a telephone or face-to-face interview with an applicant for services or a referral source to:

- (a) Determine the nature of the presenting problem;
- (b) Determine the immediacy of the need for services; and
- (c) Refer the individual for a substance abuse assessment.

Section 2. Eligibility Criteria. A person shall be eligible to receive the substance abuse services covered under this administrative 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.

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 908 KAR 1:010 - 908 KAR 1:080, 908 KAR 1:100 - 908 KAR 1:110, 908 KAR 1:150 - 908 KAR 1:220 and 908 KAR 1:230(2) and (3); 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 1:010-908 KAR 1:240 for substance abuse assessment, outpatient, intensive outpatient, and day rehabilitation services; 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 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:220, 908 KAR 1:230(2) and (3) 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 including quantity, frequency and history of personal use;

3. Utilization of prenatal care and pediatric care for newborns; and

4. Psychosocial history including the:
 - a. Presenting need;
 - 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 the individual's need for services including documentation of:
 1. Pregnancy and postpartum status as reported by the individual and a primary diagnosis of a substance-related disorder requiring treatment services; or
 2. The need for substance abuse prevention services; and
 3. The individual's need for:
 - a. Prenatal care if a pregnant woman is not regularly engaged in prenatal care;
 - b. A screening for health care problems for a postpartum woman;
 - c. Pediatric care if an infant is not currently receiving this care;
 - d. Mental health, mental retardation or developmental disability services; and
 - e. Community services to meet immediate needs for safety, food, clothing, shelter or medical care.
- (e) An initial plan of care that includes the following:
 1. The presenting need or problem;
 2. All substance abuse services needed by an individual in accordance with the assessment findings and the service placement criteria established in Section 6 of this administrative regulation to include:
 - a. An explanation of how this individual meets the admission criteria for this service;
 - b. The name of the provider to whom an individual is being referred for this service; and
 - c. The determination of the immediacy of the individual's need to receive the services based on the following criteria:
 - (i) 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 either access to a substance abuse outpatient, intensive outpatient or day rehabilitation service on an emergency basis within three (3) hours of determining the individual's need for the service or make a referral to other appropriate emergency care providers.
 - (ii) Urgent care. A provider agency shall provide access to a substance abuse outpatient, intensive outpatient and day rehabilitation service on an urgent basis within a twenty-four (24) hour period of determining the individual's need for a service. 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.
 - (iii) Routine care. A provider agency shall provide access to a substance abuse outpatient, intensive outpatient and day rehabilitation service on a routine basis within a forty-eight (48) hour period of determining the individual's need for a service. A routine condition shall pose no immediate risk of harm to self or another person but requires a clinical response.
 - (iv) 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.

(v) 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; and

3. Documentation of the name of the provider to whom an individual is being referred to address the service needs identified in paragraph (d)2c of this subsection.

(f) The completed assessment and initial plan of care shall be forwarded to the substance abuse treatment or prevention provider 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 Kentucky Division of Substance Abuse. The protocol shall be approved for a period of two (2) years at which point it shall be reevaluated by the Protocol Review Panel to determine its continued use.

(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 pre-test and post-test 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. No more than two (2) hours of substance abuse universal prevention service shall be reimbursed during a single pregnancy and postpartum period.

(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 Kentucky Division of Substance Abuse. The protocol shall be approved for a period of two (2) years at which point it shall be reevaluated by the Protocol Review Panel to determine its continued use.

(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. Identify the existence of biological, psychological, and social risk factors that may increase risk for use during pregnancy and throughout life;

4. Identify the levels of alcohol and drug use that increase risk for problems during pregnancy and throughout life; and

5. Address health and social consequences of high-risk drinking or drug choices.

(d) A therapeutic risk reduction protocol for a selective preven-

tion service may also include:

1. Changing perceptions of normative alcohol and drug use behaviors;

2. 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

3. 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 pre-test 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 increased skills necessary to make and maintain low risk alcohol and other drug choices throughout life.

(g) Limitation. No more than a total of seventeen (17) hours of selective prevention service shall be reimbursed during a single pregnancy and postpartum period.

(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 Kentucky Division of Substance Abuse. The protocol shall be approved for a period of two (2) years at which point it shall be reevaluated by the Protocol Review Panel to determine its continued use.

(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. Identify existence of biological, psychological, and social risk factors; and

4. 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. Changing perceptions of normative alcohol and drug use behaviors;

2. 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

3. 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 increased skills necessary to make and maintain low risk alcohol and other drug use choices during pregnancy and throughout life.

(g) Limitation. No more than a total of twenty-five (25) hours of an indicated prevention service shall be reimbursed during a single pregnancy and postpartum period.

(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 or advanced registered nurse practitioner (ARNP).

(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 face-to-face 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 or 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 an ambulatory care service for the purpose of reducing or eliminating an individual's substance abuse problem.

(b) 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 which 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.

(c) 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 mem-

ber 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 activities led by the individual.

(d) 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 shall be limited to no more than seven (7) hours per day not to exceed forty (40) hours per week.

(7) Day rehabilitation services.

(a) A day rehabilitation service shall be provided in a residential facility for the purpose of reducing or eliminating an individual's substance abuse problem.

(b) The following components shall be provided in a day rehabilitation 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 which shall be provided to either 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.

(c) The following components may be provided in a day rehabilitation service but shall be provided 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;

and

4. Staff support to activities led by the individual.

(d) Service limitations.

1. In accordance with 42 USC 1396d(a) and 1396d(i), payment shall not be made for care or services for any individual who has not attained sixty-five (65) years of age and who is a patient in an institution of more than sixteen (16) beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases.

2. 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.

3. Reimbursement for a day rehabilitation service 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.

(8) 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 this Medicaid benefit:

1. An outreach or case-finding activity to secure a potential individual for services;
2. Administrative activities associated with Medicaid or eligibility determinations;
3. Transportation services solely for the purpose of transporting the individual; and
4. The actual provision of a service other than a case-management service.

(9) 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 shall not be reimbursed through this Medicaid benefit.

(10) 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. A provider agency shall operate a triage component that meets the following requirements:

(1) The provider agency shall maintain 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;

(2) Triage procedures shall include:

(a) Determination of need for access to a substance abuse assessment on either an emergency, urgent or routine basis in accordance with the following:

1. 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 assessment on an emergency basis within three (3) hours of receiving a request for a service for an individual.

2. Urgent care. A provider agency shall provide access to a substance abuse assessment 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.

3. Routine care. A provider agency shall provide access to a substance abuse assessment 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; and

(b) Determination of individual's current Medicaid status.

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 of alcohol or another drug 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 indicated prevention or treatment service;
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;
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. Has used alcohol or other drugs since learning of her pregnancy; or
2. Exhibits problematic behaviors prior to pregnancy, associated with her use of alcohol and other drugs; or
3. Exhibits many of the risk factors that increase her chances of

developing a substance abuse problem;

4. Has not reached the point where a diagnosis of a substance-related disorder may be made; or

5. Has been diagnosed with a substance-related disorder and may benefit from this service as an adjunct to outpatient treatment in order to increase her readiness and response to outpatient treatment;

6. Does not have a medical or psychiatric condition that requires immediate medical care in order to benefit from this service;

7. Is not at high risk of harming herself or another person; and

8. 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(9) 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; and

5. May benefit from outpatient services or may benefit from outpatient services as a means to:

a. Increase acceptance of the need for a more intensive substance abuse treatment service; or

b. Maintain 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) Admission criteria. Admission criteria to an intensive 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(9) of this administrative regulation;

2. Has a substance abuse problem requiring structured treatment several days a week;

3. Does not have a substance abuse problem severe enough that progress in reducing or eliminating the abuse or dependency requires more intensive treatment;

4. 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;

5. Does not have a medical or psychiatric condition that requires immediate medical care prior to intensive outpatient services;

6. 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

7. May benefit from an intensive outpatient service.

(b) Continuing stay criteria. To remain in an intensive outpatient service, a qualified substance abuse treatment professional shall review an individual's progress every thirty (30) days, to 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 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 treatment goals for an intensive outpatient service;

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.

(6) Day rehabilitation substance abuse service.

(a) Admission criteria. Admission criteria to a day rehabilitation 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(9) of this administrative regulation;

2. Has a substance abuse problem that requires intensive daily or near-daily structured treatment to reduce or eliminate substance abuse or dependency;

3. 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;

4. Does not have a medical or psychiatric condition that requires immediate medical care prior to intensive outpatient services;

5. 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

6. May benefit from day rehabilitation services.

(b) Continuing stay criteria. To remain in a day rehabilitation service, a qualified substance abuse treatment professional shall review an individual's progress in treatment every two (2) weeks and 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 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 treatment goals;

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) 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(9) of this administrative regulation;

2. Has been admitted to an outpatient service, intensive outpatient service, day rehabilitation 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.

(8) 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 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 Kentucky Division of Substance Abuse; 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 (1) 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;

dance 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) An advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042, with scope of practice in psychiatric or mental health nursing;

(j) 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 and two (2) years of full-time clinical experience in psychiatric nursing;

(k) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor of science degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of full-time clinical experience in psychiatric nursing;

(l) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314, and who has one (1) of the following combinations of education and work experience:

1. 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;

2. A diploma graduate in nursing and two (2) years clinical work experience in the substance abuse or mental health field; or

3. 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;

(m) A marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS 335.300 to 335.399;

(n) A professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS 335.500 to 335.599; or

(o) A professional art therapist certified by the Kentucky Board of Certification of Professional Art Therapists in accordance with the provisions of KRS 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 one (1) of the following sets of qualifications:

a. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089 who has at least two (2) years full-time clinical work experience post-certification; or

b. One (1) of the following licensed or certified professionals who meets the training and documentation requirements in subsection (5)(a) and (c) of this section;

(i) 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;

(ii) 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;

(iii) A psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

(iv) 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;

(v) A certified psychologist with at least three (3) years of full-

time post-certification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.056;

(vi) A psychological associate with at least three (3) years of full-time post-certification practice certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;

(vii) A clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.080;

(viii) A certified social worker with at least three (3) years of full-time post-certification clinical practice in psychiatric social work licensed by the Kentucky Board of Social Work in accordance with KRS 335.080;

(ix) An advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042 with scope of practice in psychiatric or mental health nursing;

(x) 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 and two (2) years of full-time clinical experience in psychiatric nursing;

(xi) A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor of science degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of full-time clinical experience in psychiatric nursing;

(xii) 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;

(xiii) A professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

(xiv) A professional art therapist certified by the Kentucky Board of Certification of Professional Art Therapists in accordance with the provisions of KRS 309.130.

3. At least four (4) hours of face-to-face supervision shall be provided monthly by a clinical services supervisor who meets the requirements in subparagraph 2 of this paragraph and include at least two (2) of the following methodologies each month:

a. Didactic presentations;

b. Case consultation;

c. Monitoring a staff member's work with an individual through audio or audiovisual taping;

d. A supervisor's direct observation of a staff member's work with an individual; or

e. Meets with an individual that the staff member is working with to determine if she is receiving the services she needs;

4. Supervision may be provided either one-on-one or in a group setting with other staff members being supervised;

5. A clinical services supervisor shall develop and update annually, a written plan of supervision for each staff member which shall:

a. Identify knowledge and skill areas needing development;

b. Identify supervision activities to increase clinical competence in areas of need; and

c. Include a dated signature of the clinical services supervisor and clinician agreeing to the plan of supervision; and

6. 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

7. In order to continue being eligible to deliver a Medicaid substance abuse treatment assessment, case management, outpatient, intensive outpatient or day rehabilitation service, a staff member with at least a bachelors degree, who meets the requirements 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(9) 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) The service record shall include verification of the individual's pregnancy and postpartum status to include:

(a) A dated and signed statement from a licensed physician, physician assistant, certified nurse midwife, or ARNP;

(b) Anticipated due date or date of delivery; and

(c) Applicable ICD-9 diagnosis code;

(2) All entries in an individual's service record shall be:

(a) Kept current;

(b) Dated;

(c) Entitled according to the service received;

(d) Noted as to starting and ending time for each service rendered; and

(e) Signed by the staff member rendering the service, including his title.

(3) 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) Referral source;

(d) Verification of Medicaid status and medical assistance identification number (MAID);

(e) Social Security number;

(f) Age, sex, and race; and

(g) Presenting need.

(4) Assessment. Substance abuse assessment information in accordance with the requirements of Section 4(1) of this administrative regulation shall be documented.

(5) Substance abuse prevention services.

(a) An ICD-9 diagnosis code for pregnancy or postpartum shall be documented.

(b) An individual's specific risk factors for developing alcohol and drug related problems shall be identified and documented.

(c) An individual's behavioral outcomes shall be identified and address the risks associated with using alcohol, tobacco and other drugs during pregnancy and lactation and throughout their lifetime.

(d) The prevention service selected for the individual shall be documented and include an explanation of how this individual meets the admission criteria for that service.

(e) The name of the substance abuse prevention therapeutic risk reduction protocol selected for use with an individual shall be documented.

(f) 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.

(g) Referrals made to other service providers shall be documented.

(h) 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.

(i) An individual's completed pretest and post-test surveys associated with the prevention protocol shall be included in an individual's record.

(6) Substance abuse treatment services. For an individual receiving a substance abuse outpatient, intensive outpatient, day rehabilitation, 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) A treatment plan;

(b) A case-management service plan if an individual is receiving case-management services;

(c) Review and revisions of the treatment and case-management service plan;

(d) 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 and day rehabilitation 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;

(e) 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

(f) 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.

(7) 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.

(8) 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) An individual's service record and other information regarding payments claimed shall be maintained in an organized file and furnished to cabinet or federal government personnel upon request for inspection and copying.

(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) For outpatient services provided in accordance with Section 4(5) of this administrative regulation, 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 rates shall be determined in accordance with the following:

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.

3. Allowable costs shall be trended to the beginning of the rate year and indexed to the end of the rate year using Standard and Poore's Data Resource, Incorporated (DRI).

4. 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.

5. 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.

6. 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. Assessment provided in accordance with Section 4(1) of this administrative regulation;

b. Universal prevention provided in accordance with Section 4(2) of this administrative regulation;

c. Selective prevention provided in accordance with Section 4(3) of this administrative regulation;

d. Indicated prevention provided in accordance with Section 4(4) of this administrative regulation;

e. Intensive outpatient provided in accordance with Section 4(6) of this administrative regulation;

f. Day rehabilitation provided in accordance with Section 4(7) of this administrative regulation;

g. Case management provided in accordance with Section 4(8) of this administrative regulation; and

h. Community-support services provided in accordance with Section 4(9) 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 using DRI.

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 shall be a one-quarter (1/4) hour unit;

7. Day rehabilitation 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 of future payments.

(c) A provider shall submit 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) An audited cost report shall be submitted to the cabinet within six (6) months from the end of the provider's accounting year.

(e) 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.

(f) 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 maximum base payment rate 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: February 10, 2000

FILED WITH LRC: February 14, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2000, 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: Selina Riley, 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 Sharon Rodriguez

(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: There was no request for a Notice of Intent public hearing.

(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 was no request for a Notice of Intent public hearing.

(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 was 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 (+/-): None

Expenditures (+/-): None

Other Explanation: None

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of February 8, 2000

The February meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, February 8, 2000 at 4 p.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the January 13, 2000 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Marshall Long, Richard Roeding, and Joey Pendleton; Representatives James Bruce and Woody Allen.

LRC Staff: Dave Nicholas, Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Edna Lowery, Ellen Benzing, Peter Jakubiak.

Guests: Linda Renschler, Diana Barber, Robin Thomerson, KHEAA; Amber Deitz, Susan Blake, John Patterson, Office of Attorney General; Larry Perkins, Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Jill Cambron, Board of Nursing; Michael D. Vance, Wendy Satterly, James Grawe, Board of Certification of Alcohol and Drug Counselors; Tom Bennett, Department of Fish and Wildlife Resources; Jack Damron, Brenda Priestley, Department of Corrections; Kevin Noland, Terry Vance, Kentucky Board of Education; Vicky Horn, Department of Insurance; B. Anglin, Tommy Beckley, Child Laws and Social Awareness; Ronny Pryor, Capitol Solutions, Inc.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Division of Student Services: Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships. Robin Thomerson, Assistant General Counsel, and Linda Renschler, Student Aid Branch Manager, represented the Authority.

This administrative regulation was amended as follows: Sections 2 and 5(2) were amended to reference loans or scholarships received prior to July 1, 1996, rather than July 15, 1996, to comply with KRS 164.769(4).

Board of Licensure for Professional Engineers and Land Surveyors

201 KAR 18:192. Continuing professional development. Larry Perkins, Executive Director, represented the Board.

In response to a question by Representative Allen, Mr. Perkins stated that this administrative regulation did not increase fees.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to alphabetize the definitions; (3) a new Section 10 was created to incorporate by reference a necessary form; and (4) Sections 1, 2, 5, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Nursing

201 KAR 20:390. Nursing Incentive Scholarship Fund. Nathan Goldman, General Counsel, and Jill Cambron represented the Board.

This administrative regulation was amended as follows: (1) Section 1(4) was amended to correct a cross-reference to another administrative regulation; and (2) Sections 4, 5, 6, 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).

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements. This administrative regulation was amended as follows: Sections 2 and 7 were amended to comply with the drafting requirements of KRS 13A.222(4).

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. Jack Damron,

Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the Reference section for KSR 10-02-08 was amended to correct statutory citation; and (2) KSR 10-02-02 was amended to cross reference another administrative regulation.

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Kentucky Higher Education Assistance Authority: Division of Student Services: KHEAA Grant Programs

11 KAR 5:130. Student application.

Work Study Program

11 KAR 6:010. KHEAA Work-study Program

Osteopath Scholarship Program

11 KAR 14:030. Osteopathic Medicine Scholarship Program disbursement process.

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments.

Board of Nursing

201 KAR 20:070. Licensure by examination. Nathan Goldman, General Counsel, and Jill Cambron represented the Board.

201 KAR 20:110. Licensure by endorsement.

201 KAR 20:240. Fees for applications and for services.

Board of Certification of Alcohol and Drug Counselors

201 KAR 35:050. Curriculum of study.

Department of Education: Office of District Support Services: School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. Kevin Noland, Acting Commissioner and General Counsel, represented the Board.

In response to a question by Representative Bruce, Mr. Noland stated that this administrative regulation was amended annually to reflect changes in the bylaws of the Kentucky High School Athletic Association.

Bureau of Management Support Services: Health and Physical Education Programs

704 KAR 4:020. School health services.

Department of Insurance: Motor Vehicle Reparations (No-fault)

806 KAR 39:061. Repeal of 806 KAR 39:060.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the March 6, 2000 meeting of the Subcommittee:

Office Of Attorney General: Child Sexual Abuse and Exploitation Prevention Board: Victims Advocacy Division: Kentucky Victim and Witness Protection Program

40 KAR 6:020 & E. Funding assistance for child sexual abuse medical examinations. Susan Blake, Director, Victims Advocacy Division, and John Patterson, Victims Advocacy Division, represented the Board. Tommy Beckley and Bonnie Anglin, Child Laws and Social Awareness, spoke in opposition to this administrative regulation.

Mr. Beckley stated that: (1) Child Laws and Social Awareness was a new foundation in Kentucky; (2) he: (a) questioned this administrative regulation's use of the terms "suspected" and "victims"; (b) believed some children who were not abused were subjected to the examinations: 1. in violation of the rights of the children, their families and other citizens; and 2. which were a form of abuse against the children; (c) did not want additional money used to fund examinations for children who did not need to be examined; and (d) thought that under Kentucky law: 1. a person "suspected" of abuse had not actually been abused; and 2. a person was not a "victim" unless a crime had been perpetrated against the person; (4) a "victim of suspected abuse" required: (a) an actual victim against whom

a crime had been perpetrated; and (b) more than a suspicion; (5) the phrase was used both in: (a) the applicable statute (KRS 15.935(1)(b)); and (b) this administrative regulation; (6) the legal challenges against the statute and this administrative regulation would cost the taxpayers and Kentucky's children; (7) he: (a) was: 1. concerned about the effect these provisions would have on children; and 2. not concerned about the effect on abusive parents; (b) believed: 1. abusive parents should be punished; 2. the system should be revamped to spend money to: a. protect children; and b. build stronger families; and (c) did not want the state to continue to spend money in a direction that had not clearly been established; and (8) it was not possible to be a victim of suspected child abuse.

Ms. Blake stated that: (1) this administrative regulation established the plan to spend money received from the sale of licensed plates under the applicable statutes; and (2) the purpose of the license plate money was to fund examinations for children who had made an allegation of sexual abuse as part of the investigation of those allegations.

In response to questions by Representative Bruce, Ms. Blake stated that: (1) while she was an attorney, she did not understand the relevance of Mr. Beckley's arguments to the promulgation of this administrative regulation; and (2) the program was established to fill a need caused by inadequate funding for child abuse examinations.

In response to a question by Representative Bruce, Mr. Beckley stated that: (1) because this administrative regulation quoted invalid statutory language, both this administrative regulation and the underlying statutes were invalid; (2) if a person could be considered a victim before a crime or event had occurred, that person should be able to: (a) contact his insurance company; (b) claim to be victim of a (future) car accident; and (c) receive payment from the insurance company; and (3) a person could not be considered a victim until the act had been proven.

In response to a question by Chairman Arnold, Mr. Beckley stated that the language he questioned was contained in a statute that was quoted in this administrative regulation.

In response to a question by Chairman Arnold, Ms. Blake stated that the board had promulgated this administrative regulation to: (1) comply with the statute; and (2) authorize funding to implement the law.

Chairman Arnold stated that: (1) because the concern related to statutory language, those concerns should be presented to the legislature or the committee that had considered this issue previously; (2) if the statute was amended, the administrative body would be required to amend this administrative regulation to comply with the new statutory provisions; (3) while he believed Mr. Beckley had raised valid concerns, the proper forum for discussion of those concerns was: (a) not this Subcommittee; and (b) the General Assembly; and (4) because the current statute included this provision, the subcommittee was required to approve this administrative regulation to establish the funding procedure for the examinations.

Ms. Anglin stated that: (1) this administrative regulation's use of the words "suspected" and "believed" did not provide a safety net for a child against whom a social worker thought abuse had occurred; and (2) she believed the funding assistance encouraged and abused some children indirectly because applicants were authorized to perform sexual abuse examinations under the terms "suspected", "believed" and "victims".

Chairman Arnold stated that: (1) he was not going to argue the merits of the law; (2) because the concerns should be brought before the General Assembly, Mr. Beckley and Ms. Anglin should submit their concerns to the appropriate subject matter committee; and (3) this administrative regulation simply established a funding mechanism for compliance with current law.

Ms. Blake stated that the main purpose of the board was to prevent abuse.

Representative Allen asked if this administrative regulation should be found deficient to ensure that the issue was considered during the 2000 Regular Session of the General Assembly.

Subcommittee staff stated that: (1) this administrative regulation: (a) complied with the applicable statute; and (b) established a funding mechanism for examinations as authorized by the General Assembly; and (2) the concern regarding suspected abuse: (a) required amendments to applicable statutes; and (b) could not be

addressed in an amendment to this administrative regulation.

Mr. Beckley stated that he wanted this administrative regulation deferred until his organization could determine if it was within the law.

Senator Roeding stated that: (1) page 4, line 9, of this administrative regulation included the phrase "children believed to have been sexually abused"; (2) he: (a) shared their concerns; and (b) had a friend who was: (a) falsely accused of abusing his blind child; and (b) required to spend a lot of time, money, and local embarrassment in response to the false allegations.

Senator Pendleton stated that he: (1) wanted to: (a) ensure that the law protected children who were being sexually abused; and (b) know what terminology could be used to ensure the protection of children; (2) did not want a loophole established that prevented picking up a child to investigate an allegation of abuse.

In response to a question by Chairman Arnold, Ms. Blake stated that: (1) traditionally, a social worker or police officer: (a) received an allegation that a child had been sexually abused; and (b) subsequently made a referral for a medical examination; (2) even though evidence of abuse sometimes became evident during the medical examination, that evidence did not become evident in the majority of cases; (3) the examinations were used as a fact-finding tool to help establish whether the child was a victim of abuse; (4) the issue of funding qualified physicians who conducted these examinations was different than the issue of making false allegations; and (5) she believed that: (a) a child who made an allegation of sexual abuse was entitled to a medical examination to determine if abuse had occurred; and (b) funding should be available for those examinations.

Ms. Anglin stated that a child who was not abused would experience psychological harm if the child was required to undergo a sexual abuse examination.

Chairman Arnold stated that: (1) KRS Chapter 13A required the language used in an administrative regulation to mirror the applicable statutory language; (2) because the statute used the terms "suspected", "victim", and "believed", this administrative regulation used those same terms; and (3) he believed that: (a) the issues raised by this administrative regulation should be referred to the judiciary committee to determine if a statutory amendment was required; and (b) the Subcommittee should defer consideration of this administrative regulation.

Ms. Blake stated that the board would agree to the requested deferral.

Mr. Patterson stated that this administrative regulation mirrored the language used in the statute.

Ms. Blake stated that KRS 15.935(1)(b) authorized disbursement of the funds to fund the cost of medical examinations of victims of suspected child abuse.

Subcommittee staff stated that because the same terminology was used in both the statute and this administrative regulation, this administrative regulation could not use different language until and unless the statute was amended.

The Subcommittee approved a motion by Representative Allen, seconded by Senator Roeding, to defer the Subcommittee's consideration of this administrative regulation, as amended, and to refer the issues raised to the appropriate legislative committees.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 1 was amended to delete provisions that repeated or summarized statutory provisions, as required by KRS 13A.120(2)(e) and (f); (3) Sections 1, 2, 3, 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); and (4) a new Section 7 was created to incorporate by reference required material.

Personnel Cabinet: Classified

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

Unclassified

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

Board of Medical Licensure

201 KAR 9:175. Physician assistants; certification and supervision.

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201 KAR 9:310. Continuing medical education.

Finance and Administration Cabinet: Commercial Mobile Radio Service Emergency Telecommunications Board

202 KAR 6:010E. Definitions for 202 KAR Chapter 6.
202 KAR 6:020E. CMRS carrier cost recovery.
202 KAR 6:030E. Confidential and proprietary information.
202 KAR 6:040E. Dispute resolution.
202 KAR 6:050E. PSAP certification.
202 KAR 6:060E. PSAP Pro Rata Fund disbursement.

Department of Fish and Wildlife Resources: Game

301 KAR 2:222E. Waterfowl hunting requirements.
301 KAR 2:226E. Youth waterfowl hunting season.

Justice Cabinet: Department of Corrections: 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.

Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex.

Restricted Custody Center

501 KAR 7:010. Definitions.
501 KAR 7:020. Administration; management.
501 KAR 7:040. Personnel.
501 KAR 7:050. Physical plant.
501 KAR 7:060. Security; control.
501 KAR 7:080. Sanitation; hygiene.
501 KAR 7:120. Admission; release.
501 KAR 7:140. Inmate rights.

Direct Supervision for Full-Service Jails

501 KAR 10:010. Definitions.
501 KAR 10:040. Personnel.
501 KAR 10:060. Security; control.
501 KAR 10:070. Safety; emergency procedures.
501 KAR 10:110. Classification.
501 KAR 10:120. Admission; release.
501 KAR 10:140. Inmate rights.

Department of Juvenile Justice: Child Welfare

505 KAR 1:090E. Supervised placement revocation.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:018. Special overweight or overdimensional permits.

Cabinet for Health Services: Department for Public Health: Division of Adult and Child Health: Health Services and Facilities

902 KAR 20:275. Mobile health services.

Department for Medicaid Services: Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.
907 KAR 1:044E. Mental health center services.
907 KAR 1:155E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities.

Payment and Services

907 KAR 3:110E. Community mental health center substance abuse services.

Kentucky Children's Health Insurance Program

907 KAR 4:030E. Kentucky Children's health Insurance Program Phase III Title XXI of the Social Security Act.

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

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

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

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.

The Subcommittee adjourned at 4:30 p.m. until March 6, 2000, at 2 p.m. in Room 149 of the Capitol Annex.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**HOUSE COMMITTEE ON NATURAL RESOURCES
AND ENVIRONMENT
Meeting of January 19, 2000**

And administrative regulation was available for consideration by the House Committee on Natural Resources and Environment during its meeting on January 19, 2000.

The following administrative regulation and an amendment proposed by the Department of Fish and Wildlife Resources were found to comply with KRS Chapter 13A:

Department of Fish and Wildlife Resources
301 KAR 1:085 and amendment

A copy of the administrative regulation and the amendment are attached for your convenience.

**HOUSE STANDING COMMITTEE ON
HEALTH AND WELFARE
Meeting of January 11, 2000**

The following administrative regulations were available for consideration by the House Standing Committee on Health and Welfare during its meeting of January 11, 2000, having been referred to the Committee on December 17, 1999, pursuant to KRS 13A.290(6):

201 KAR 2:040
907 KAR 1:060
907 KAR 1:061
907 KAR 4:020 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 11, 2000 meeting, which are hereby incorporated by reference.

**SENATE STANDING COMMITTEE ON
HEALTH AND WELFARE**

The following administrative regulations were available for consideration by the Senate Standing Committee on Health and Welfare during its meeting of January 12, 2000, having been referred to the Committee on December 17, 1999, pursuant to KRS 13A.290(6):

201 KAR 2:040
907 KAR 1:060
907 KAR 1:061
907 KAR 4:020 & E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 12, 2000 meeting, which are hereby incorporated by reference.

**HOUSE STANDING COMMITTEE ON
HEALTH AND WELFARE
Meeting of January 25, 2000**

The following administrative regulations were available for consideration by the House Standing Committee on Health and Welfare during its meeting of January 25, 2000, having been referred to the Committee on January 14, 2000, pursuant to KRS 13A.290(6):

201 KAR 17:011
201 KAR 17:012

201 KAR 17:013
201 KAR 17:015
201 KAR 17:025
201 KAR 17:027
201 KAR 17:030
201 KAR 17:041
201 KAR 17:070
201 KAR 17:090

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 25, 2000 meeting, which are hereby incorporated by reference.

**SENATE STANDING COMMITTEE ON
HEALTH AND WELFARE**

The following administrative regulations were available for consideration by the Senate Standing Committee on Health and Welfare during its meeting of January 26, 2000, having been referred to the Committee on January 14, 2000, pursuant to KRS 13A.290(6):

201 KAR 17:011
201 KAR 17:012
201 KAR 17:013
201 KAR 17:015
201 KAR 17:025
201 KAR 17:027
201 KAR 17:030
201 KAR 17:041
201 KAR 17:070
201 KAR 17:090
902 KAR 55:020 & E
902 KAR 55:025 & E
907 KAR 1:011 & E
907 KAR 1:031
907 KAR 1:605
907 KAR 1:640 & E
907 KAR 1:645
922 KAR 2:090 & E
922 KAR 5:090

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 26, 2000 meeting, which are hereby incorporated by reference.

**HOUSE STANDING COMMITTEE ON
HEALTH AND WELFARE
Meeting of February 1, 2000**

The following administrative regulations were available for consideration by the House Standing Committee on Health and Welfare during its meeting of February 1, 2000, having been referred to the Committee on January 14, 2000, pursuant to KRS 13A.290(6):

902 KAR 55:020 & E
902 KAR 55:025 & E
907 KAR 1:011 & E
907 KAR 1:031
907 KAR 1:605
907 KAR 1:640 & E
907 KAR 1:645
922 KAR 2:090 & E
922 KAR 5:010

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Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 1, 2000 meeting, which are hereby incorporated by reference.

**HOUSE STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT
Meeting of February 3, 2000**

The following administrative regulations were available for consideration by the House Standing Committee on Economic Development during its meeting of February 3, 2000, having been referred to the Committee on January 14, 2000, pursuant to KRS 13A.290(6):

306 KAR 1:010
306 KAR 1:020
306 KAR 1:030
306 KAR 1:040
306 KAR 1:070.

The following administrative regulations will be found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2), however, final action was deferred: 306 KAR 1:010

The Committee rationale for the finding of deficiency is as follows:

The definition of "employee" in Section 1(5) failed to include seasonal employees.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The following administrative regulations were deferred pursuant to KRS 13A.300: 306 KAR 1:010

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 3, 2000 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

Excerpts from the House Economic Development Committee meeting, February 3, 2000:

There was a motion and a second to amend 306 KAR 1:010 as follows: Section 1(5) should be changed to read as follows: on page 2, Section 1(5) after the word "zone" to delete "but" and insert "and" and after the word "shall" to delete "not". The motion was carried with a roll call vote of 16 yeas, 0 nays, and 0 passes. Gene Fuqua, representing the Cabinet for Economic Development, did not concur with the amendment, thus, the administrative regulation was not amended.

**HOUSE STANDING COMMITTEE ON
HEALTH AND WELFARE
Meeting of February 15, 2000**

The following administrative regulations were available for consideration by the House Standing Committee on Health and Welfare during its meeting of February 15, 2000, having been referred to the Committee on February 9, 2000, pursuant to KRS 13A.290(6):

201 KAR 20:070
201 KAR 20:110
201 KAR 20:240
201 KAR 20:390
201 KAR 20:411
201 KAR 35:050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 15, 2000 meeting, which are hereby incorporated by reference.

**SENATE STANDING COMMITTEE ON
HEALTH AND WELFARE
Meeting of February 16, 2000**

The following administrative regulations were available for consideration by the Senate Standing Committee on Health and Welfare during its meeting of February 16, 2000, having been referred to the Committee on February 9, 2000, pursuant to KRS 13A.290(6):

201 KAR 20:070
201 KAR 20:110
201 KAR 20:240
201 KAR 20:390
201 KAR 20:411
201 KAR 35:050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 16, 2000 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates I - 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 I - 15

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 26 of the Administrative Register.

Subject Index I - 24

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
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VOLUME 25

The administrative regulations listed under VOLUME 25 are those administrative regulations that were originally published in Volume 25 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1999 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

12 KAR 4:170E	2813	4-22-99	201 KAR 9:320	687	
Expired		11-18-99	As Amended	2834	
109 KAR 2:020E	2814	4-19-99	Withdrawn		1-10-2000
Replaced		11-15-99	201 KAR 18:010		
109 KAR 15:020E	2816	4-19-99	Amended	2928	
Replaced		10-7-99	Withdrawn		9-13-99
200 KAR 30:010E	2311	2-26-99	201 KAR 18:050		
Replaced		9-16-99	Amended	2929	(See Volume 26)
200 KAR 30:020E	2312	2-26-99	201 KAR 18:071	2983	10-15-99
Replaced		9-16-99	201 KAR 18:080		
200 KAR 30:030E	2313	2-26-99	Amended	2930	(See Volume 26)
Replaced		9-16-99	201 KAR 18:091	2983	10-15-99
200 KAR 30:040E	2314	2-26-99	201 KAR 18:100		
Replaced		9-16-99	Amended	2931	(See Volume 26)
200 KAR 30:050E	2315	2-26-99	201 KAR 18:110		
Replaced		9-16-99	Amended	2931	(See Volume 26)
200 KAR 30:060E	2316	2-26-99	201 KAR 18:120		
Replaced		9-16-99	Amended	2932	(See Volume 26)
200 KAR 30:070E	2316	2-26-99	202 KAR 3:020		
Replaced		9-16-99	Amended	2933	(See Volume 26)
201 KAR 2:020E	2818	4-22-99	401 KAR 47:110		
Replaced		12-15-99	Amended	2433	(See Volume 26)
201 KAR 38:010E	2317	3-4-99	401 KAR 48:320	2476	(See Volume 26)
Replaced		9-15-99	401 KAR 68:010	1747	
201 KAR 38:020E	2318	3-4-99	Amended	2400	
Replaced		9-15-99	As Amended	2857	10-13-99
201 KAR 38:030E	2319	3-4-99	401 KAR 68:020	1748	
Replaced		9-15-99	Amended	2401	
201 KAR 38:040E	2320	3-4-99	As Amended	2858	(See Volume 26)
Replaced		9-15-99	401 KAR 68:048	1750	
201 KAR 38:060E	2322	3-4-99	Amended	2402	
Replaced		9-15-99	As Amended	2858	10-13-99
415 KAR 1:080E	2529	4-12-99	401 KAR 68:065	1751	
Replaced		10-13-99	Amended	2404	
500 KAR 13:020E	2534	4-5-99	As Amended	2859	10-13-99
Replaced		9-16-99	401 KAR 68:090	1753	
501 KAR 6:020E	2819	5-14-99	Amended	2405	
Replaced		9-16-99	As Amended	2859	10-13-99
501 KAR 6:999E	2821	5-14-99	401 KAR 68:100	1754	
Replaced		9-16-99	Amended	2407	
806 KAR 17:066E	2323	3-12-99	As Amended	2859	(See Volume 26)
Expired		9-18-99	401 KAR 68:150	1756	
900 KAR 6:050E	2536	3-26-99	Amended	2408	
Expired		10-18-99	As Amended	2860	10-13-99
908 KAR 3:160E	2353	3-9-99	401 KAR 68:200	1757	
Replaced		9-15-99	Amended	2409	
			As Amended	2860	(See Volume 26)

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 15:040			415 KAR 1:120		
Amended	2923	9-1-99	Amended	1122	(See Volume 26)
200 KAR 5:340	2709	(See Volume 26)	418 KAR 1:020		
201 KAR 2:010			Amended	2938	(See Volume 26)
Amended	2925	(See Volume 26)	418 KAR 1:030		
201 KAR 2:095			Amended	2940	(See Volume 26)
Amended	2926	(See Volume 26)	418 KAR 1:040		
201 KAR 9:175			Amended	2942	(See Volume 26)
Amended	2423		418 KAR 1:050		
201 KAR 9:310			Amended	2944	(See Volume 26)
Amended	2427		418 KAR 1:060		
			Amended	2946	(See Volume 26)

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
418 KAR 1:070			907 KAR 1:019		
Amended	2948	(See Volume 26)	Amended	1248	
505 KAR 1:080	2985	(See Volume 26)	Amended	1937	(See Volume 26)
601 KAR 14:010			907 KAR 1:021		
Amended	2952	(See Volume 26)	Amended	1252	
703 KAR 5:070	2731	(See Volume 26)	Amended	1940	(See Volume 26)
802 KAR 1:010			907 KAR 3:035	2732	(See Volume 26)
Amended	434		908 KAR 1:310		
Amended	880	(See Volume 26)	Amended	2017	
902 KAR 20:160			Amended	2632	
Amended	2967	(See Volume 26)	908 KAR 1:311	2484	(Volume 24)
902 KAR 20:240			908 KAR 1:370	2485	(Volume 24)
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			739 KAR 1:050E	352	6-22-99
			Expired		1-18-2000
40 KAR 6:020E	1088	10-27-99	780 KAR 3:065	1645	1-21-2000
101 KAR 2:102E	1089	11-4-99	780 KAR 3:071E	1647	1-21-2000
101 KAR 3:015E	1094	11-4-99	780 KAR 3:072E	1648	1-21-2000
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202 KAR 6:010E	1383	11-23-99	780 KAR 6:005E	1656	1-21-2000
202 KAR 6:020E	1384	11-23-99	780 KAR 6:061E	1658	1-21-2000
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301 KAR 2:221E	1392	11-24-99	803 KAR 2:301E	27	6-15-99
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301 KAR 2:222E	1394	11-24-99	Replaced	1005	11-15-99
301 KAR 2:225E	703	8-31-99	803 KAR 2:307E	31	6-15-99
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301 KAR 2:226E	1397	11-24-99	803 KAR 2:309E	33	6-15-99
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401 KAR 5:072E	1642	2-14-2000	803 KAR 2:313E	35	6-15-99
502 KAR 31:020E	24	5-26-99	Replaced	1008	11-15-99
Replaced	1155	12-16-99	803 KAR 2:414E	37	6-15-99
503 KAR 1:110E	536	8-10-99	Replaced	654	11-15-99
Replaced	1203	2-14-2000	803 KAR 2:500E	38	6-15-99
503 KAR 5:090E	538	8-10-99	Replaced	655	11-15-99
Replaced	1205	2-14-2000	806 KAR 17:205E	353	6-24-99
505 KAR 1:090E	1398	12-14-99	Expired		1-18-2000
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921 KAR 2:016E	971	10-1-99	Repealed	562	8-25-99
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806 KAR 17:066			Amended	476	
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808 KAR 10:260			902 KAR 13:030		
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808 KAR 10:340			902 KAR 13:050		
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808 KAR 10:400	668		902 KAR 13:070		
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907 KAR 1:640			Recodified from 904 KAR 2:016		7-8-99
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