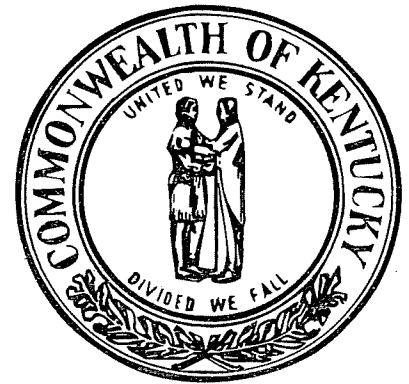


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 27, NUMBER 7
MONDAY, JANUARY 1, 2001

| | |
|-----------------------------------|------|
| ARRS - January Agenda | 1723 |
| Regulation Review Procedure | 1727 |

REPRINT: (None)

NOTICES OF INTENT:

| | |
|---|------|
| University of Kentucky, Agricultural Experiment Station | 1728 |
| Attorney General's Office, Department of Law | 1728 |
| Revenue Cabinet | 1729 |
| Board of Pharmacy | 1729 |
| Tourism Development Cabinet, Finance Authority | 1730 |
| Department of Fish and Wildlife Resources | 1731 |
| Economic Development Cabinet | 1737 |
| Justice Cabinet - Corrections | 1737 |
| Transportation Cabinet | 1740 |
| Department of Education | 1741 |
| Education Professional Standards Board | 1741 |
| Workforce Development Cabinet | 1742 |
| Department of Insurance | 1742 |
| Department of Housing, Buildings and Construction | 1743 |
| Cabinet for Health Services | 1745 |
| Cabinet for Families and Children | 1748 |

EMERGENCIES:

| | |
|---|------|
| Department of Fish and Wildlife Resources | 1749 |
| Cabinet for Health Services | 1754 |

AS AMENDED:

| | |
|--|------|
| Attorney General's Office | 1766 |
| Personnel Cabinet | 1766 |
| Board of Physical Therapy | 1768 |
| Commercial Mobile Service Emergency Telecommunications Board | 1770 |
| Department of Agriculture | 1774 |
| NREPC - Air Quality | 1775 |
| Justice Cabinet - Corrections | 1800 |
| Department of Education | 1801 |
| Education Professional Standards Board | 1802 |
| Workforce Development Cabinet | 1803 |
| Department of Alcoholic Beverage Control | 1803 |
| Department of Insurance | 1804 |
| Department of Housing, Buildings and Construction | 1812 |
| Cabinet for Health Services | 1813 |
| Cabinet for Families and Children | 1817 |

AMENDED AFTER HEARING:

| | |
|---|------|
| Kentucky Higher Education Assistance Authority | 1821 |
| Council on Postsecondary Education | 1827 |
| Office of the Petroleum Storage Tank Environmental Assurance Fund | 1838 |
| Department of Financial Institutions | 1843 |
| Cabinet for Health Services | 1846 |

PROPOSED AMENDMENTS RECEIVED THROUGH NOON,

DECEMBER 15, 2000:

| | |
|---|------|
| University of Kentucky, Agricultural Experiment Station | 1849 |
| Kentucky Retirement Systems | 1861 |
| Justice Cabinet - Corrections | 1863 |
| Transportation Cabinet | 1868 |
| Department of Education | 1869 |
| Education Professional Standards Board | 1877 |
| Workforce Development Cabinet | 1881 |
| Department for the Blind | 1885 |
| Labor Cabinet - Workers' Claims | 1890 |
| Department of Insurance | 1896 |
| Department of Housing, Buildings and Construction | 1902 |
| Cabinet for Health Services | 1908 |
| Cabinet for Families and Children | 1955 |

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 2000:

| | |
|---|------|
| Revenue Cabinet | 1968 |
| Kentucky Retirement Systems | 1969 |
| Department of Military Affairs | 1970 |
| Real Estate Commission | 2005 |
| Department of Insurance | 2007 |
| Cabinet for Health Services | 2013 |
| Cabinet for Families and Children | 2021 |

| | |
|---|------|
| December 12, 2000 Minutes of the ARRS | 2024 |
| Other Committee Reports | 2031 |

CUMULATIVE SUPPLEMENT

| | |
|---------------------------------------|--------|
| Locator Index - Effective Dates | G - 2 |
| KRS Index | G - 14 |
| Subject Index | G - 24 |

MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on January 9, 2001, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1723-1726 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2000 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 27, Kentucky Register, page 318 (short form: 27 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 2001 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator David L. Williams
Senate President

Representative Jody Richards
House Speaker

Senate and House Members

Senator Richard L. Roeding
President Pro Tem

Representative Larry Clark
Speaker Pro Tem

Senator Dan Kelly
Majority Floor Leader

Representative Gregory D. Stumbo
Majority Floor Leader

Senator David K. Karem
Minority Floor Leader

Representative Danny R. Ford
Minority Floor Leader

Senator Charlie Borders
Majority Caucus Chairman

Representative Jim Callahan
Majority Caucus Chairman

Senator David E. Boswell
Minority Caucus Chairman

Representative Jeffrey Hoover
Minority Caucus Chairman

Senator Elizabeth Tori
Majority Whip

Representative Joe Barrows
Majority Whip

Senator Marshall Long
Minority Whip

Representative Woody Allen
Minority Whip

Robert Sherman, Director

Samuel L. Hensley, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Representative John A. Arnold, Jr., Chairman
Senator Marshall Long
Senator Joey Pendleton
Senator Richard L. "Dick" Roeding
Representative Woody Allen
Representative Jim Bruce
Representative Jimmie Lee

Staff

Ellen Benzing
Donna Little
Edna Lowery
Stephen Lynn
Dave Nicholas
Angela Phillips
Ellen Steinberg
Donna Valencia
Susan Wunderlich

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - January 9, 2001 at 10:00 a.m., Room 149, Capitol Annex**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services**

Early Childhood Development Scholarship Program

- 11 KAR 16:001. Definitions for 11 KAR Chapter 16. (Amended After Hearing)
- 11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process. (Amended After Hearing)
- 11 KAR 16:020. Early Childhood Development Scholarship Program disbursement process. (Amended After Hearing)
- 11 KAR 16:030. Early Childhood Development Scholarship Program overawards and refunds. (Deferred from December)
- 11 KAR 16:040. Early Childhood Development Scholarship Program recordkeeping requirements. (Deferred from December)
- 11 KAR 16:050. Early Childhood Development Scholarship Program costs. (Deferred from December)
- 11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives. (Amended After Hearing)

COUNCIL ON POSTSECONDARY EDUCATION

Nonpublic Colleges

- 13 KAR 1:030 & E. Campus security. ("E" expires 2/19/01) (Amended After Hearing)

Public Educational Institutions

- 13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program. (Not Amended After Hearing)
- 13 KAR 2:100 & E. Campus security. ("E" expires 2/19/01) (Amended After Hearing)

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

Selective Excise Tax; Motor Vehicle Usage

- 103 KAR 44:060. Motor vehicle usage tax valuation. (Deferred from November)

BOARDS

Board of Dentistry

- 201 KAR 8:440. Biennial fee schedule and registration.

Board of Medical Licensure

- 201 KAR 9:021 & E. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees. ("E" expires 1/19/01)

Real Estate Commission

- 201 KAR 11:011. Definitions for 201 KAR Chapter 11.
- 201 KAR 11:040. Contracts to contain financing provisions.
- 201 KAR 11:045. Written offers to be submitted to owner-client.
- 201 KAR 11:062. Retention of brokers' records.
- 201 KAR 11:090. Instruments prepared by broker, disposition.
- 201 KAR 11:095. Closing statements.
- 201 KAR 11:105. Owner's consent and authorization.
- 201 KAR 11:121. Improper conduct.
- 201 KAR 11:135. Salesman's obtaining broker's license.
- 201 KAR 11:145. Salesman's duties when terminating affiliation with broker.
- 201 KAR 11:161. Repeal of 201 KAR 11:160.
- 201 KAR 11:170. Private school approval.
- 201 KAR 11:190. Rules of practice and procedure before the Kentucky Real Estate Commission.
- 201 KAR 11:210. Licensing, education, and testing requirements.
- 201 KAR 11:230. Mandatory continuing education.
- 201 KAR 11:245. Property management procedures and guidelines.
- 201 KAR 11:250. Listing and purchase contracts - provisions required.
- 201-KAR 11:350. Seller's disclosure of conditions form.
- 201 KAR 11:400. Agency disclosure requirements.
- 201 KAR 11:420. Standards for internet advertising.
- 201 KAR 11:430. Procedure of new applicant for criminal records background check.

Board of Ophthalmic Dispensers

- 201 KAR 13:010. Board; powers, duties, meetings.
- 201 KAR 13:012. Repeal of 201 KAR 13:011.
- 201 KAR 13:030. Contact lens fitting.
- 201 KAR 13:040. Licensing; application, examination; temporary permit; inactive status.
- 201 KAR 13:050. Apprentices.
- 201 KAR 13:055. Continuing education requirements.
- 201 KAR 13:060. Military service; reciprocity.

Board of Physical Therapy

- 201 KAR 22:031. Therapist's licensing procedure.
- 201 KAR 22:106. Assistant's certification procedure.

Real Estate Appraisers Board

- 201 KAR 30:010. Definitions for 201 KAR Chapter 30.
- 201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.
- 201 KAR 30:040. Standards of practice.
- 201 KAR 30:050. Examination, education, and experience requirement.
- 201 KAR 30:060. Fees administrative regulation.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

201 KAR 30:120. Temporary appraisal licenses and certificates.

Board of Certification for Professional Counselors

201 KAR 36:020. Fees - renewal date. (Deferred from December)

201 KAR 36:070. Education requirements. (Deferred from November)

TOURISM DEVELOPMENT CABINET

Office of the Secretary

300 KAR 2:020. Tourism Development Loan Program; criteria for making and collecting loans.

Department of Fish and Wildlife Resources

Game

301 KAR 2:111E. Deer and turkey hunting on federal areas. ("E" expires 4/21/01) (Deferred from December)

301 KAR 2:178E. Deer hunting on wildlife management areas. ("E" expires 4/21/01) (Deferred from December)

301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting. ("E" expires 3/21/01) (Deferred from November)

301 KAR 2:226E. Youth waterfowl hunting season. ("E" expires 4/21/01) (Deferred from December)

Hunting and Fishing

301 KAR 3:100E. Special commission permits. ("E" expires 4/21/01) (Deferred from December)

Licensing

301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses. ("E" expires 3/21/01) (Deferred from November)

Department of Parks

Parks and Campgrounds

304 KAR 1:040. Campgrounds.

CABINET FOR ECONOMIC DEVELOPMENT

Department of Financial Incentives

Tax Incentives Division

Kentucky Economic Opportunity Zone Program

307 KAR 7:010. Definitions. (Deferred from December)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

Public Water Supply

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:020. Public and semipublic water supplies - general provisions.

401 KAR 8:070. Public notification.

401 KAR 8:075. Consumer confidence reports.

401 KAR 8:150. Disinfection and filtration.

401 KAR 8:160. Enhanced filtration and disinfection.

401 KAR 8:500. Disinfection by-products.

401 KAR 8:510. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:080. Claims procedures. (Public Hearing in November)

JUSTICE CABINET

Department of Corrections

Division of Local Facilities

Jail Standards for Full-service Facilities

501 KAR 3:010. Definitions for 501 KAR Chapter 3.

501 KAR 3:050. Physical plant.

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

Restricted Custody Center

501 KAR 7:070. Safety; emergency procedures.

Direct Supervision for Full-service Jails

501 KAR 10:010. Definitions for 501 KAR Chapter 10.

501 KAR 10:050. Physical plant.

LABOR CABINET

Department of Workers' Claims

803 KAR 25:110E. Workers' compensation managed health care plans. ("E" expires 4/21/01) (Deferred from December)

803 KAR 25:190E. Utilization review and medical bill audit. ("E" expires 4/21/01) (Deferred from December)

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Fees and Taxes

806 KAR 4:010 & E. Fees of the Department of Insurance.

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:001 & E. Prelicensing courses of study; instructors.

806 KAR 9:070 & E. Examinations.

806 KAR 9:220 & E. Continuing education.

806 KAR 9:260 & E. Rental vehicle agent and managing employee.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

806 KAR 9:280 & E. Business entity election.

806 KAR 9:300 & E. Current agent licensees in good standing to receive equivalent license.

Health Insurance Contracts

806 KAR 17:180E. Standard health benefit plan and comparison format. ("E" expires 1/19/01) (Deferred from September)

806 KAR 17:220 & E. Approval criteria and requirements for reentry into the Kentucky health insurance market.

806 KAR 17:230 & E. Requirements regarding medical director's signature on health care benefit denials.

806 KAR 17:240. Data reporting requirements.

806 KAR 17:260 & E. Conversion policy minimum benefits.

806 KAR 17:280 & E. Registration, utilization review, and internal appeal.

806 KAR 17:290 & E. Independent External Review Program.

806 KAR 17:300 & E. Provider Agreement and Risk Sharing Agreement filing requirements.

Motor Vehicle Reparations (No-fault)

806 KAR 39:030. Kentucky no-fault rejection form.

Department of Financial Institutions

Check Cashing

808 KAR 9:010. Books and records to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer.

808 KAR 9:020. Establishment of examination fees.

808 KAR 9:030. KRS Chapter 368 - Administrative hearing procedures.

Securities

808 KAR 10:410. Viatical settlement interests. (Public Hearing in October)

Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:030. KRS Chapter 294 - administrative hearing procedures.

Kentucky Racing Commission

Thoroughbred Racing

810 KAR 1:009 & E. Jockeys and apprentices.

810 KAR 1:026 & E. Racing associations.

810 KAR 1:027 & E. Entries, subscriptions and declarations.

810 KAR 1:028 & E. Disciplinary measures.

Harness Racing

811 KAR 1:075 & E. Racing and track rules.

CABINET FOR HEALTH SERVICES

Certificate of Need

900 KAR 6:050E. Certificate of need administrative regulation. ("E" expires 4/21/01) (Deferred from December)

Department of Public Health

Division of Epidemiology and Health Planning

Vital Statistics

901 KAR 5:050 & E. Fees for searches, certified copies of certificates and records.

Communicable Diseases

902 KAR 2:060. Immunization schedules. (Public Hearing in November)

Maternal and Child Health

902 KAR 4:085E. Newborn Hearing Screening Equipment Grant Award. ("E" expires 3/21/01) (Deferred from November)

902 KAR 4:120 & E. Health Access Nurturing Development Services (HANDS) Program. ("E" expires 1/19/01) (Public Hearing in November)

Sanitation

902 KAR 10:060E. On-site sewage disposal application fee. ("E" expires 4/21/01) (Deferred from December)

902 KAR 10:121E. Inspection fees for public swimming and bathing facilities. ("E" expires 4/21/01) (Deferred from December)

Health Services and Facilities

902 KAR 20:008E. License procedures and fee schedule. ("E" expires 2/19/01) (Deferred from December)

902 KAR 20:066E. Operation and services; adult day health care programs. ("E" expires 4/21/01) (Deferred from December)

Food and Cosmetics

902 KAR 45:006E. Kentucky bed and breakfast. ("E" expires 4/21/01) (Deferred from December)

902 KAR 45:110E. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions. ("E" expires 4/21/01) (Deferred from December)

902 KAR 45:120E. Inspection fees; permit fees; hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies. ("E" expires 4/21/01) (Deferred from December)

Radiology

902 KAR 100:065. Reciprocal recognition.

902 KAR 100:100. Industrial radiography.

Office of Inspector General

Division of Licensing and Regulation

Office of the Inspector General

906 KAR 1:110. Critical access hospital services.

Department for Medicaid Service

Division of Long Term Care

Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services. ("E" expires 4/21/01) (Deferred from December)

907 KAR 1:019E. Pharmacy services. ("E" expires 4/21/01) (Deferred from December)

907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability ("E" expires 2/19/01) (Deferred from November)

907 KAR 1:155E. Payments for supports for community living services for an individual with mental retardation or a developmental disability. ("E" expires 2/19/01) (Deferred from November)

907 KAR 1:170 & E. Payment for home and community based waiver services. ("E" expires 2/19/01) (Deferred from December)

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

907 KAR 1:320E. Kentucky patient access and care system (KenPAC). ("E" expires 1/19/01) (Deferred from September)

907 KAR 1:475E. Repeal of 907 KAR 1:470, 907 KAR 1:472 and 907 KAR 1:474. ("E" expires 1/19/01) (Will not be replaced by an ordinary) (Deferred from September)

907 KAR 1:636. Repeal of 907 KAR 1:635. (Public Hearing in November)

Payment and Services

907 KAR 3:030 & E. Coverage and payments for IMPACT Plus services. ("E" expires 2/19/01) (Deferred from November)

907 KAR 3:125E. Chiropractic services and reimbursement. ("E" expires 4/21/01) (Deferred from December)

907 KAR 3:130. Medical necessity.

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

Day Care

922 KAR 2:090. Child care facility licensure.

922 KAR 2:100. Certification of family child care homes.

922 KAR 2:110. Child care facility provider requirements.

922 KAR 2:120. Child care facility health and safety standards.

OTHER BUSINESS:

CABINET FOR HEALTH SERVICES Department for Public Health

State Health Plan

902 KAR 17:041. State Health Plan for facilities and services.

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.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

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

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

December 5, 2000

- (1) **12 KAR 7:010.** Administrative hearing procedures.
- (2) The University of Kentucky, College of Agriculture, Division of Regulatory Services intends to promulgate the new administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, January 22, 2001, at 10 a.m. in room 109 of the University of Kentucky, Regulatory Services Building, Lexington, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people 10 days prior to the hearing, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Chris Thompson, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275. FAX: (859) 323-9931. Phone: (859) 257-2785.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to procedure for holding administrative hearings are KRS 250.081, 250.421, 250.571, and 250.825.
- (b) The administrative regulation that the University of Kentucky, College of Agriculture, Division of Regulatory Services intends to promulgate will not amend an existing administrative regulation. This regulation establishes the requirements for conducting administrative hearings by the Division of Regulatory Services.
- (c) The necessity and function of the proposed administrative regulation is as follows: To detail in regulation form the procedures that will be used by the Division of Regulatory Services in conducting administrative hearings that will assure due process rights to all parties.
- (d) The benefits expected from the administrative regulation are: Most cases involving violations of the commercial feed, fertilizer, seed, or farm milk handlers laws can be resolved through informal discussions, educational efforts, and problem-solving procedures. The proposed administrative regulation permits an informal proceeding as a first step in identifying and solving a possible regulatory violation. If the informal proceeding does not result in a resolution, the proposed regulation then provides the process for conducting a formal administrative hearing.
- (e) The administrative regulation will be implemented as follows: The Division of Regulatory Services will notify the party or parties involved when a violation(s) occurs warranting regulatory action, and informal and formal administrative hearings will be held as described in 7(d) above.

ATTORNEY GENERAL'S OFFICE
Department of Law

October 12, 2000

- (1) **40 KAR 6:020.** Funding assistance for child sexual abuse medical examinations.
- (2) The Attorney General intends to promulgate an amendment to Sections 2, 5, and 7 of 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 January 22, 2001 at 9 a.m. in Conference Room B - Attorney General's Office, Second Floor, 1024 Capital Center Drive, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their request to the following address: John Patterson, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 696-5312, Fax (502) 573-8315.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from John Patterson, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (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 15.180 and 15.935(1)(b).
- (b) The administrative regulation that the Attorney General intends to promulgate will amend an existing administrative regulation, 40 KAR 6:020, as follows: Section 2 directs an applicant to apply on the paper application form that is incorporated by reference in the administrative regulation. The amendment will offer the applicant the alternative of filing electronically. Section 5 currently requires a provider to submit a year-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

end report that includes an itemized list of costs for elements of medical examinations. The itemized list will be eliminated while retaining other required information for the report. Section 7 incorporates by reference the "Application for Child Sexual Abuse Medical Examination Funding Assistance", October 1999. This will be amended to simplify the computation of need and the reimbursement procedure, and to eliminate the requirement to submit a computation of current costs where that information duplicates information from other sources. It also allows the application to be made electronically.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment is necessary to update and simplify the application process to reflect changes in other aspects of the procedures for paying the cost of child sexual abuse medical examinations.

(d) The benefits expected from this regulation are: The workload on a provider of case management services will be reduced by eliminating reporting of information now available elsewhere, and the application process will be simplified thereby encouraging additional qualified providers to apply.

(e) The administrative regulation will be implemented as follows: The Child Sexual Abuse and Exploitation Prevention Board will continue to approve or deny applications for funding assistance submitted by a provider. An applicant will submit a proposal using the new application form or it may submit a proposal electronically.

REVENUE CABINET Department of Law Division of Tax Policy

December 14, 2000

(1) **103 KAR 28:140.** Communications access services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 25, 2001, at 10 a.m., at 200 Fair Oaks Lane - Training Room A, 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 January 25, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard Dobson, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone: (502) 564-6843, Ext. 4442, Fax: (502) 564-9565.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the sales and use tax is KRS 131.130(1) and 139.710.

(b) This administrative regulation will establish the requirements and guidelines for the application of sales tax to communications access services pursuant to KRS 139.100.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 131.130(1) and 139.710 authorize the cabinet to make administrative regulations for the administration of the tax laws. This administrative regulation describes the guidelines required for the administration of KRS 139.100.

(d) The benefits expected from the administrative regulation are improved taxpayer education and voluntary compliance.

(e) The administrative regulation will be implemented as follows: The provisions of this administrative regulation will be implemented as soon as they are effective and will be incorporated into publications issued by the Revenue Cabinet.

BOARD OF PHARMACY

December 15, 2000

(1) **201 KAR 2:090.** Reference material and prescription equipment.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:090 relating to the requirements for reference material and prescription equipment in a pharmacy.

(3) A public hearing to receive oral and written comments on the proposed amendment to the existing administrative regulation has been scheduled for January 25, 2001 at 9:05 a.m. local prevailing time, at 23 Millcreek Park-Board Room, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 25, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 23 Millcreek Park, Frankfort, Kentucky 40601-9230, (502) 573-1580, FAX (502) 573-1582.

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

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

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

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

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

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the equipment requirements in a pharmacy is found at KRS 315.035(6) and 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the required references and other material that all pharmacies must maintain to obtain and retain a license.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.035 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the material that must be present in a pharmacy to facilitate the safe dispensing of pharmaceuticals to the public.

(d) The benefit expected from the amendment to the administrative regulation is a simplification in the requirements of maintaining information to include electronic references that are readily retrievable and to provide greater certainty that there will be a uniform minimum set of drug information available to pharmacists.

(e) The amendment to the administrative regulation will be implemented as follows: the board proposes to simplify the requirements to provide for the use of electronic references.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than January 16, 2001.

December 15, 2000

(1) **201 KAR 2:165**, Transfer of prescription information.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:165 relating to the requirements for the transfer of prescription information.

(3) A public hearing to receive oral and written comments on the proposed amendment to the existing administrative regulation has been scheduled for January 25, 2001 at 09 a.m. local prevailing time, at 23 Millcreek Park-Board Room, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 25, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 23 Millcreek Park, Frankfort, Kentucky 40601-9230, (502) 573-1580, FAX (502) 573-1582.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the transfer of prescription information is found at KRS 315.191(1)(a)-(f).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which a pharmacist receives or transmits prescription information to another pharmacist.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.215 and 315.191(1)(a)-(f) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which pharmacists transfer prescription information.

(d) The benefit expected from the amendment to the administrative regulation is a simplification in the process and greater certainty in the information provided, thereby reducing the potential for medication errors.

(e) The amendment to the administrative regulation will be implemented as follows: the board proposes to simplify the method of the transmission of information to permit the use of a facsimile to transfer the prescription information.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than January 16, 2001.

TOURISM DEVELOPMENT CABINET Tourism Development Finance Authority

December 11, 2000

(1) **300 KAR 2:030**, Tourism Development Act; standards for approving projects.

(2) The Tourism Development Finance Authority intends to promulgate an administrative regulation which will establish standards for preliminary and final approval of an eligible company and its tourism attraction project for inducements granted pursuant to the Kentucky Tourism Development Act Sales Tax Credit Program. KRS 154.29-040 mandates the establishment of such standards.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 2001, at 9 a.m. local time, at 500 Mero Street, Capital Plaza Tower, 10th Floor Conference Room, Frankfort, Kentucky.

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

1. It is requested in writing by at least 5 persons, 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 January 23, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: J. Patrick Abell, General Counsel, Tourism Development Cabinet, 500 Mero Street, Capital Plaza Tower, Room 1209, Frankfort, Kentucky 40601; telephone (502) 564-2172, ext. 352; facsimile (502) 564-1079.

(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

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

tive 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 Tourism Development Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 154.29-040.

(b) The administrative regulation that the Tourism Development Finance Authority intends to promulgate replaces an existing regulation of the Kentucky Economic Development Finance Authority. The Economic Development Partnership transferred to Kentucky Tourism Development Finance Authority the functions KEDFA previously performed for this program.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 154.29-040 standards requires the establishment of a development loan program. This regulation will establish those standards.

(d) The benefit expected from the regulation is the ability to provide assistance to the tourism industry.

(e) The administrative regulation will be implemented by the Tourism Development Loan Authority which will review applications under the standards established by the regulation.

(8) Any person with a disability for which the Tourism Development Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify J. Patrick Abell at the above-stated address no later than January 13, 2001.

Department of Fish and Wildlife Resources

December 15, 2000

(1) **301 KAR 1:130.** Live bait for personal use.

(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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:130 as follows: It will correct technical errors and regulate the taking of live bait for personal use in trout waters.

(c) The necessity and function of the proposed administrative regulation is to better manage our fish populations.

(d) The benefits expected from the administrative regulation is better fisheries management with less conflicts.

(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.

December 15, 2000

(1) **301 KAR 2:049.** Small game and furbearer on furbearer hunting on public areas.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:049 as follows: It will correct technical errors and regulate grouse/quail hunting on the West Kentucky WMA.

(c) The necessity and function of the proposed administrative regulation is to better manage our small game seasons.

(d) The benefits expected from the administrative regulation is increased and better access for disabled individuals.

(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.

December 15, 2000

(1) **301 KAR 2:081.** Holding native wildlife.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:081 as follows: It will establish the minimum criteria for holding native wildlife in captivity and transporting such.

(c) The necessity and function of the proposed administrative regulation is to better manage our wildlife populations.

(d) The benefits expected from the administrative regulation is better native population management and better control of native wildlife that is confined.

(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.

December 15, 2000

(1) **301 KAR 2:082.** Importing and holding exotic wildlife.

(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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:082 as follows: It will establish the minimum criteria for holding exotic wildlife in captivity and transporting such.

(c) The necessity and function of the proposed administrative regulation is to better manage our native and exotic wildlife populations.

(d) The benefits expected from the administrative regulation is better native population management and better control of exotic wildlife that is confined.

(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.

December 15, 2000

(1) **301 KAR 2:083.** Holding live cervids.

(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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:083 as follows: It will establish the minimum criteria for holding live cervids in captivity and transporting such.
- (c) The necessity and function of the proposed administrative regulation is to better manage our native and exotic wildlife populations.
- (d) The benefits expected from the administrative regulation is better native population management and better control of native and exotic wildlife that is confined.
- (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.

December 15, 2000

- (1) **301 KAR 2:132.** Elk depredation permits and hunting requirements.
- (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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 - 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and,
 - 2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Jennifer Fetter Fields, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
 - 1. "I agree to attend the public hearing"; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1).
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:132 as follows: It will adjust season dates, bag limits and other requirements for hunting elk in 2 quota hunts.
 - (c) The necessity and function of the proposed administrative regulation is to establish season dates and other hunting requirements for the elk population.
 - (d) The benefits expected from the administrative regulation are allowing regulated hunting with sound conservation and management of wildlife 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.

December 15, 2000

- (1) **301 KAR 2:142.** Spring wild turkey hunting.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 - 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and,
 - 2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Jennifer Fetter Fields, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
 - 1. "I agree to attend the public hearing"; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1).
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:142 as follows: It will adjust season dates, bag limits and other requirements for hunting spring wild turkey.
 - (c) The necessity and function of the proposed administrative regulation is to establish season dates and other hunting requirements for the wild turkey population.
 - (d) The benefits expected from the administrative regulation are allowing regulated hunting with sound conservation and management of wildlife 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.

December 15, 2000

- (1) **301 KAR 2:144.** Fall wild turkey hunting.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 - 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and,

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

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 January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:144 as follows: It will adjust season dates, bag limits and other requirements for hunting fall wild turkey.

(c) The necessity and function of the proposed administrative regulation is to establish season dates and other hunting requirements for the wild turkey population.

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

December 15, 2000

(1) **301 KAR 2:172.** Deer hunting seasons and requirements

(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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:172 as follows: It will adjust season dates, bag limits and other requirements for hunting deer.

(c) The necessity and function of the proposed administrative regulation is to establish season dates and other hunting requirements for the deer population.

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

December 15, 2000

(1) **301 KAR 2:178.** Deer hunting on wildlife management areas.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:178 as follows: It will adjust season dates, bag limits and other requirements for hunting deer on public areas and in special hunts on those areas.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(c) The necessity and function of the proposed administrative regulation is to establish season dates and other hunting requirements for the deer population.

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

November 22, 2000

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

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be cancelled.

(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, FAX (502) 564-6508.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing waterfowl hunting is KRS 150.025(1) and 150.600.

(b) The administrative regulation that the department intends to promulgate will amend an existing administrative regulation. It will establish waterfowl hunting seasons.

(c) The necessity and function of the proposed administrative regulation is to manage waterfowl within the federal parameters.

(d) The benefits expected from the administrative regulation are increased recreational opportunities and effective wildlife management.

(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.

November 22, 2000

(1) **301 KAR 2:222**, Waterfowl hunting requirements.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be cancelled.

(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, FAX (502) 564-6508.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing waterfowl hunting is KRS 150.025(1) and 150.600.

(b) The administrative regulation that the department intends to promulgate will amend an existing administrative regulation. It will establish waterfowl hunting requirements.

(c) The necessity and function of the proposed administrative regulation is to manage waterfowl within the federal parameters.

(d) The benefits expected from the administrative regulation are increased recreational opportunities and effective wildlife management.

(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.

December 15, 2000

(1) **301 KAR 3:010**, Public use of wildlife management areas.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:010 as follows: It will adjust activities that are permitted on wildlife management areas, such as the use of dogs during the gun deer season.

(c) The necessity and function of the proposed administrative regulation is to establish acceptable activities on wildlife management areas in order to reduce conflict.

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

(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.

December 15, 2000

(1) **301 KAR 3026.** Access to wildlife management areas for mobility-impaired individuals.

(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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Jennifer Fetter Fields, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Phone (502) 564-3400 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) and 150.620.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:026 as follows: It will adjust activities that are permitted on wildlife management areas by mobility-impaired individuals and better coordinate our disability programs.

(c) The necessity and function of the proposed administrative regulation is to better coordinate our disability programs.

(d) The benefits expected from the administrative regulation is increased and better access for disabled individuals.

(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.

December 15, 2000

(1) **301 KAR 3:027.** Hunting and fishing method exemptions for disabled persons.

(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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:027 as follows: It will adjust activities that are permitted for disabled individuals and better coordinate our disability programs.

(c) The necessity and function of the proposed administrative regulation is to better coordinate our disability programs.

(d) The benefits expected from the administrative regulation is increased and better access for disabled individuals.

(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.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

December 15, 2000

- (1) **301 KAR 3:028**. Applying for disability hunting and fishing exemptions.
- (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 January 22, 2001 at 10 a. m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and,
 2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Jennifer Fetter Fields, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1).
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:028 as follows: It will better coordinate our disability programs.
 - (c) The necessity and function of the proposed administrative regulation is to better coordinate our disability programs.
 - (d) The benefits expected from the administrative regulation is increased and better access for disabled individuals.
 - (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.

CABINET FOR ECONOMIC DEVELOPMENT

December 14, 2000

- (1) **307 KAR 2:021**, Repeal of 307 KAR 2:020.
- (2) The Cabinet for Economic Development intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral or written comments on the proposed administrative regulation has been scheduled for January 22, 2001 at 9 a.m. (Eastern Standard Time), at the Cabinet for Economic Development, 24th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or 1 person representing 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 January 22, 2001, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Robin Fields Kinney, General Counsel, Cabinet for Economic Development, Capital Plaza Tower, 24th Floor, Frankfort, Kentucky 40601, (502) 564-7670, fax (502) 564-1535.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Cabinet for Economic Development at the address listed above.
- (7) The following information relates to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of administrative regulations relating to the subject matter of the administrative regulation is KRS 154.20-010(1) and 13A.312.
 - (b) The Cabinet for Economic Development intends to promulgate a new administrative regulation relating to the repeal of 307 KAR 2:020.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation repeals 307 KAR 2:020. Pursuant to Resolution No. 00-2 of the Kentucky Economic Development Partnership Board, the functions, duties and records of the Kentucky Tourism Development Act will be transferred from the Cabinet for Economic Development to the Tourism Development Cabinet. The Tourism Development Finance Authority, established in EO 2000-1503, shall assume the functions and duties of the Kentucky Economic Development Finance Authority with regard to the Act.
 - (d) The benefit expected from the administrative regulation is to repeal 307 KAR 2:020 to allow the Tourism Development Cabinet to promulgate an administrative regulation relating to the Kentucky Tourism Development Act.
 - (e) The administrative regulation will be implemented as follows: The Department of Financial Incentives, Cabinet for Economic Development as the staff to the Kentucky Economic Development Finance Authority will implement the regulation by transfer of its records to the Tourism Development Cabinet as staff to the Tourism Development Finance Authority.

JUSTICE CABINET Department of Corrections

December 13, 2000

- (1) **501 KAR 6:020**, Department of Corrections.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001, 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 January 22, 2001, the public hearing will be cancelled.

(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, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:

1. Antiharassment Policy CPP 3.15 shall be established to advise employees what constitutes harassment based on age, disability, gender, religion, color, race or national origin and to advise employees on the process to follow if subjected to harassment.

2. Inmate Personal Property (CPP 17.1) shall be amended to change the date that each inmate be issued and required to wear state issued clothing.

3. Classification Document (CPP 18.6) shall be deleted as this information is included in the Classification Manual and CPP 18.1.

4. Cooperation with Law Enforcement Agencies (CPP 27-07-01) shall be amended to provide definitions; delineate how to submit an agreement regarding the use of an offender as an informant; and to conform to KRS Chapter 13A requirements.

5. Pretrial Diversion (CPP 27-10-01) shall be amended to clarify the degree of authority an officer shall have over a pretrial diversioner; and to conform to KRS Chapter 13A requirements.

6. Supervision: Case Classification (CPP 27-12-01) shall be amended to: add statutory authority; delineate who the policy applies to; provide definitions; delete language regarding levels of supervision, raising or lowering level of supervision, release from supervision; initial and reassessment of offender risks or needs and intensive supervision category; assessment of risk or need scale and assaultive offense; add the heading for supervision classification categories; provide the number of personal contacts, home visits and verifications necessary each month for an offender on maximum supervision; provide the number of personal contacts, home visits and records checks each month for an offender on medium supervision and set forth the contact, reporting requirements and point scores for minimum administrative supervision; clarify who qualifies for inactive status; and conform to KRS Chapter 13A requirements.

7. Interstate Compact Transfers (CPP 27-14-01) shall be amended to add statutory authority; provide definition; require approval of probation judge or district supervisor prior to beginning the transfer; set forth procedures for transfer from another state; permit an offender to request a courtesy supervision transfer; delete language regarding travel permits; delete the need to remove the case from the active case load at the local district level; clarify the department's policy regarding an offender from another state being supervised in Kentucky; require an officer to call Central Office for reporting instructions if an offender wishes to transfer back to the sending state; and conform to KRS Chapter 13A requirements.

8. Search; seizure; chain of custody; Disposal of Evidence (CPP 27-16-01) shall be amended to provide statutory authority; delineate who the policy applies to; provide definitions; clarify the policy statement, the filing of a special supervision report, the investigation and search by an officer, and the way evidence is handled; delete language regarding the chain of custody for evidence; and conform to KRS Chapter 13A requirements.

9. Reinstatement of Offenders to Active Supervision (CPP 27-24-02) shall be added to establish guidelines for reinstating an offender to active supervision after the offender has been on inactive status.

10. Restoration of Civil Rights (CPP 27-27-01) shall be amended to clarify who the policy applies to and provide a definition; allow a felony offender to make application for civil rights upon conditional release; provide the correct address for the Division of Probation and Parole, require that the offender be informed that restoration does not permit him to purchase, own or possess a deadly weapon; delete language regarding the need for signature by the Commonwealth Attorney and processing the application; and conform to KRS Chapter 13A requirements.

11. Firearms or Explosives Restoration (CPP 27-28-01) shall be amended to clarify the purpose, delineate who the policy applies to; delete inappropriate entities from the policy statement and require an officer to assist a former felony offender applying for restoration of the right to own or carry a firearm or explosives; permit the offender to seek assistance in answering questions on the form; and conform to KRS Chapter 13A requirements.

12. Conditional Discharge of Sex Offenders (CPP 27-30-02) shall be amended to clarify that offenders who fit the criteria shall be supervised; clarify the level of authority an officer shall have over a conditional dischargee; delete language regarding arresting or taking into custody a conditional dischargee for a misdemeanor or violation of conditions of supervision; and conform to KRS Chapter 13A requirements.

13. Release of Information of Factual Content on Presentence or Postsentence Investigation Reports (CPP 28-01-09) shall be amended to provide definitions; permit an inmate to inspect the factual content of a waived PSI, and set forth the contents of a PSI and require placement of the written request and response in the inmate's file; provide the statutory authority for responding to an open records request, shorten the number of days to review the waived PSI, allow the inmate to inspect the edited PSI and prohibit the release of the PSI; and conform to KRS Chapter 13A requirements.

14. Parole Plans, Halfway Houses, Extended Furlough, Sponsorship, and Gradual Release (CPP 28-03-01) shall be amended to clarify who the policy applies to; provide definitions; delete language which is no longer applicable to the policy; clarify when an investigation shall be initiated; include the action to be taken if an offender is unable to find suitable employment while incarcerated and delete language regarding intensive supervision; and comply with KRS Chapter 13A requirements.

15. Furlough Verifications (CPP 28-04-01) shall be amended to clarify applicability of policy and comply with KRS Chapter 13A requirements.

(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.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(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.

December 14, 2000

(1) **501 KAR 6:150**, Eastern Kentucky Correctional Complex.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001, 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 January 22, 2001, 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, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:150, as follows: Restricted Wing - Enhanced Supervision Unit (EKCC 18-13-02) shall be established to identify an inmate for placement in a restricted area.

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

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

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

December 13, 2000

(1) **501 KAR 6:170**, Green River Correctional Complex.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001, 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 January 22, 2001, 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, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:170, as follows:

1. GRCC 01-02-01 - Organization and Assignment of Responsibility shall be amended to update references, omit the deputy warden division titles, clarify the training coordinator's chain of command and comply with KRS Chapter 13A requirements.

2. GRCC 01-03-01 - Staff Meetings, Purpose and Requirements shall be amended to change the language from plural to singular, also to correct typing errors made in previous policy.

3. GRCC 01-06-01 - Inmate Access to and Communication with GRCC Staff shall be amended to change the language from plural to singular, and to correct terminology regarding the deputy wardens' titles.

4. GRCC 01-09-01 - Duty Officer Responsibilities shall be amended to change the language from plural to singular, to correct terminology regarding the deputy wardens' titles and to update the policy on the proper procedure regarding duties of the duty officer.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

5. GRCC 01-10-01 - Smoking: GRCC Facility shall be amended to omit the area in Building B that was used for smoking and to comply with KRS Chapter 13A requirements.
 6. GRCC 01-12-01 - Public Information and Media Communication shall be amended to change the location of areas that are accessible to media representatives, to change language from plural to singular, to further explain the duties and responsibilities regarding public access.
 7. GRCC 02-01-03 - Fiscal Management: Agency Funds shall be amended to update the policy's reference guide, delete the imprest cash fund and to change the plural language to singular language.
 8. GRCC 02-03-01 - Fiscal Management: Audits shall be amended to include ProCard expenditures to the audit listing.
 9. GRCC 02-06-02 - Inmate Canteen Committee shall be amended to update language, change title from fiscal officer to fiscal manager, and to omit the deputy warden division titles.
 10. GRCC 03-01-01 - General Guidelines for GRCC Employees shall be amended to update references, to update telephone call usage, to address nonuniform staff dress code, to better define prohibited activities and conduct, to better define the actual process being used regarding criminal record check and resignation - retirement and to comply with KRS Chapter 13A requirements.
 11. GRCC 03-06-01 - Organization of Payroll and Personnel Records shall be amended to update reference section, and to change the times the Personnel Office is open on paydays.
 12. GRCC 05-01-01 - Information System shall be amended to update MARS into policy, update reference section of policy and comply with KRS Chapter 13A requirements.
 13. GRCC 08-01-01 - Occupational Exposure to Serious and Infectious Diseases shall be amended to better define actual process regarding a contaminated disposable item, amended to explain what to do in the event of an exposure and to comply with KRS Chapter 13A requirements.
 14. GRCC 08-02-01 - Fire Safety shall be amended to add location of fire evacuation routes, to delete the emergency preparedness plan from this policy, to restate actual process regarding annual inspection and to comply with KRS Chapter 13A requirements.
 15. GRCC 10-01-01 - Special Management Unit shall be amended to correct and update the reference section, change policy to better reflect the actual procedures being used and comply with KRS Chapter 13A requirements.
 16. GRCC 12-02-01 - Sanitation Inspections shall be added to better explain how and when sanitation inspections are done.
 17. GRCC 12-03-01 - Vermin and Insect Control shall be added to define how GRCC's vermin and pest control operates.
 18. GRCC 13-15-01 - Health Education Program and Detoxification shall be amended to update the policy references, correct typographic errors and change plural language to singular language.
 19. GRCC 14-02-01 - Legal Services Program shall be amended to update the policy references and to change policy to better reflect the actual procedures being used. Also, to change plural language to singular.
 20. GRCC 15-01-01 - GRCC Adjustment Program and Procedures shall be deleted because CPP 15.6 covers this.
 21. GRCC 20-01-01 - Educational Programs shall be amended to update references, reflect the name change, add statement regarding student rights to privacy, and to comply with KRS Chapter 13A requirements.
 22. GRCC 21-01-01 - Library Services shall be amended to update references, the addition of video cassette and audio cassette, delete reference regarding obscene and graphic sexual behavior, punishment regarding replacement cost of books, address inmate attire and to comply with KRS Chapter 13A requirements.
 23. GRCC 22-03-01 - Employee Use of Recreation Facilities shall be added to provide guidelines for employee use of GRCC's recreation facilities.
- (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.

TRANSPORTATION CABINET

December 1, 2000

- (1) **603 KAR 7:090, Railroads.**
- (2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation relating to railroads, including certain duties previously vested in the Kentucky Railroad Commission.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 24, 2001, 10 a.m., local prevailing time, 10th floor General Counsel Conference Room, 501 High Street, State Office Building, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association 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 January 24, 2001, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should contact Geri Grigsby at: phone (502) 564-7650, fax (502) 564-5238, or e-mail ggrigsby@mail.kytc.state.ky.us. A written request may be mailed to the Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.
- (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 13 provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation is KRS 174.057.
 - (b) The administrative regulation that the Transportation Cabinet intends to promulgate will create 603 KAR 7:090. It will provide various duties

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

relating to railroads, including those which were previously carried out by the Kentucky Railroad Commission.

(c) The necessity, function, and conformity of the proposed administrative regulation are as follows: 2000 Ky. Acts ch. 417, which takes effect December 1, 2000, as a result of a constitutional amendment to abolish the Kentucky Railroad Commission enacted by the General Assembly and approved by the voters in the November 2000 general election.

(d) The benefits expected from the administrative regulation will provide the duties, functions, and responsibilities associated with the regulation of railroads by the Transportation Cabinet for the benefit of various railroad companies, political subdivisions, and the general public.

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

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

KENTUCKY BOARD OF EDUCATION

December 6, 2000

(1) **704 KAR 7:130**, Minority teacher recruitment.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 26, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 26, 2001 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

(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 from the Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority is KRS 160.380(2)(d).

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 7:130.

(c) The necessity, function, and conformity of the proposed administrative regulation is that KRS 160.380(2)(d) requires each school district superintendent to report annually the school district's recruitment process and activities used to increase the percentage of minority teachers in the district pursuant to administrative regulations of the Kentucky Board of Education. This administrative regulation establishes the recruitment and annual reporting procedures.

(d) The benefit expected from this amendment is to:

1. Collect reliable data about minority recruitment at the district level; and

2. Refine the data collection instrument so that it will provide information that will accurately identify numbers of candidates available for school level vacancies.

(e) The administrative regulation will be implemented as follows: Copies of the revised regulation outlining the revised reporting requirements will be disseminated to local district superintendents.

EDUCATION PROFESSIONAL STANDARDS BOARD

December 2000

(1) **704 KAR 20:696**. Standards for accreditation of teacher education units and approval of programs.

(2) The Education Professional Standards Board 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 January 24, 2001 at 1 p.m. at the Council on Postsecondary Education Conference Room A, 1024 Capital Center Drive, 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 January 24, 2001, the hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the accreditation of an educator preparation unit and the approval of programs is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:696, Standards for ac-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

creditation of teacher education units and approval of programs. The amendment will adopt new national standards and implement new accreditation standards established by the General Assembly.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 requires that an educator preparation institution be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board.

(d) The benefits expected from administrative regulation are: The proposed amendment will adopt new nationally recognized standards that integrate the accreditation standards established by the General Assembly; the accreditation process under these standards will be streamlined and will better identify strengths and weaknesses of educator preparation programs.

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

WORKFORCE DEVELOPMENT CABINET Kentucky State Board for Proprietary Education

December 14, 2000

(1) **783 KAR 1:050.** School closing process. This proposed amended administrative regulation will mandate the various steps that the board shall take when a school closes and ceases to do business.

(2) The Kentucky State Board for Proprietary Education 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 January 22, 2001, at 3 p.m., Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, 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 calendar days prior to January 22, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Nancy L. Black, Acting Executive Director, Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 564-4233, Fax (502) 564-4818.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to school closings is KRS 165A.400 and 165A.390(5).

(b) The administrative regulation the Kentucky State Board for Proprietary Education intends to promulgate will mandate the steps that the board must take when a school closes and ceases to operate.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will set forth the steps that the board must take when a school closes and ceases to operate.

(d) The benefit expected from this administrative regulation is the orderly implementation of record keeping of closed schools as required by KRS 165A.390(5).

(e) The regulation will be implemented by the executive director and board administrator who are charged with overseeing the process to be undertaken when a school closes and ceases to operate.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

December 13, 2000

(1) **806 KAR 3:200,** Financial information privacy.

(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 January 22, 2001, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Julie Mix McPeak, 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 PL 106-102, §501(b), the Gramm-Leach-Bliley Act.

(b) The administrative regulation that the Department intends to promulgate will not amend an existing regulation. It will specify standards for

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

the security and confidentiality of a consumer's financial information, and safeguards against security hazards and unauthorized access to consumers' financial information.

(c) The necessity and function of the proposed administrative regulation is as follows: PL 106-102 §501(b) requires state insurance commissioners to establish standards for insurers, agencies and agents to safeguard the security and confidentiality of consumer records and information. KRS 304.2-110 allows the commissioner to promulgate rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code.

(d) The benefits expected from the administrative regulation are as follows: This administrative regulation will specify privacy requirements the commissioner deems necessary for the safeguard of consumer financial information. Additionally, this administrative regulation will subject domestic insurers, agencies and agents to privacy regulation similar in scope to privacy rules applicable to other financial institutions and insurance producers regulated at the state or federal level.

(e) The administrative regulation will be implemented as follows: Following the promulgation of this regulation, all affected insurers, agencies and agents will receive notice of the privacy standards. The Department of Insurance will investigate alleged violations and will take appropriate enforcement action.

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

(1) **815 KAR 4:010.** Annual inspection of passenger elevators.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001, at 10 a.m., local time, in the department's conference room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons or an administrative body or an association having at least 5 members; and
2. A minimum of 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 January 22, 2001, 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 persons shall state:

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.060(18), 490 and 520.

(b) The department intends to amend 815 KAR 4:010, Annual inspection of passenger elevators, by incorporating the latest editions of ASME A17 Codes as they relate to the safety inspection of existing elevators and escalators; as well as conveyors, moving walks, electrical equipment and hydraulic elevators.

(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation is to adopt safety standards for passenger elevators used by the citizens of this Commonwealth. This amendment is necessary to update the incorporated ASME Codes to the latest editions for inspecting existing passenger elevators and related elevator equipment.

(d) The benefits expected from this administrative regulation are: To allow the Commonwealth enforce minimum safety requirements in existing elevators.

(e) This administrative regulation will be implemented by the department's annual elevator inspection program.

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 2001, at 10 a.m., local time, in the department's conference room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons or an administrative body or an association having at least 5 members; and
2. A minimum of 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 January 22, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-3833.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The department intends to amend 815 KAR 7:105, Kentucky Building Code/1997 as follows:

1. To update the referenced standards to latest edition of the ASME codes governing the Safety Code for Elevators and Escalators;
2. Amend Section 1017.1 to allow egress doorway thresholds in residential units to comply with the CABO Code;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

3. Amend Chapter 4 to create a new section regarding swimming pool enclosures;
 4. Amend Section 310.6.1.6 to add language that handrail grip size does not exceed 2 5/8" and create a new section, 310.6.1.7, to indicate that the CABO code does not require retrofitting or upgrading existing conditions which are not being altered; and
 5. Amend Section 1211.2 to amend the clear opening of attic space to 20 x 30".
- (c) The necessity and function of the proposed administrative regulation is as follows: The intended amendment is necessary to keep the referenced standards regarding elevator inspection as current as possible. The other amendments proposed were developed and approved by the CABO Subcommittee and presented for approval by the Board of Housing. The proposals were made by design professionals experiencing various problems with the implementation of the KBC to single family dwelling construction.
- (d) The benefits expected from this administrative regulation are: Current standards using the most up to date technology in the elevator industry and clarification of existing language.
- (e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

- (1) **815 KAR 20:100.** Joints and connections.
- (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., EST, on January 22, 2001, 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 January 22, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-3833.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.
- (b) The department intends to amend Section 14 of this administrative regulation to include an exception allowing lead flashings for 3 and 4-inch vent stacks with a minimum 12-inch base.
- (c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation relates to the methods used in joining certain types of piping materials together and the methods used in securing plumbing fixtures to waste piping outlets. This amendment will allow a smaller, lighter and less expensive lead flashing for vent stacks.
- (d) The benefits expected from this administrative regulation are: Lead flashings are optional so it could be less expensive.
- (e) This administrative regulation will be implemented by state plumbing inspectors.

December 15, 2000

- (1) **815 KAR 20:120.** Water supply and distribution.
- (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 January 22, 2001, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 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 January 22, 2001, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-3833.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.
- (b) The department intends to amend 815 KAR 20:120, Water supply and distribution by amending the application chart located in Section 2 by including a newly developed standard that applies specifically to carbonated beverage machines.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it as well as identify and publish the manufacturer's specification number of the material accepted in those installations.
- (d) The benefits expected from this administrative regulation are: Backflow prevention is required now but this amendment will specify the type required.
- (e) This administrative regulation will be implemented by plan review and inspection by the Kentucky Division of Plumbing inspectors.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

CABINET FOR HEALTH SERVICES
Department for Public Health

December 15, 2000

(1) **901 KAR 5:010**, State registrar of vital statistics.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 31, 2001, 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 January 31, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, 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 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 901 KAR 5:010 are KRS 213.141.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 901 KAR 5:010 to establish the form number for the certification of a live birth for which the State Registrar of Vital Statistics is responsible and additionally, to incorporate the form into the regulation by reference.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the appointment and authority of the State Registrar of Vital Statistics to certify vital events and establishes the form on which a live birth is to be certified.

(d) The benefits expected from administrative regulation are to increase efficiency in making revisions to the form on which a live birth is certified in accordance with legal guidance or directives.

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

December 15, 2000

(1) **902 KAR 105:020**. General requirements.

(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 January 31, 2001 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 January 31, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Lewis, 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 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 requirements for operators of radiation producing machines is KRS 211.870, 211.890, 211.993.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 105:020. The American Registry of Radiologic Technology (ARRT), the national certification and testing agency for radiologic technologists, has amended its continuing education requirements and increased its testing fees. Fees are collected by the cabinet at the time of operator application and forwarded directly to the ARRT to ensure candidates are accepted for testing. This amendment allows the cabinet to increase the continuing education requirement to coincide with ARRT's national standard as well as increase the cabinet's fee for testing as established by the ARRT.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 211.870, 211.890 and 211.993 author-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

izes the Cabinet for Health Services to regulate operators of sources of radiation other than licensed practitioners of the healing arts, including: the classification and certification of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of certificates; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, certificates, and renewal certificates; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform general requirements for the certification of operators of sources of radiation.

(d) The benefits expected from administrative regulation are: The increased fee for testing and the increase in continuing educational requirements will allow the cabinet to ensure protection of public health as related to the use of radiation producing machines by certified operators.

(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

December 15, 2000

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 31, 2001 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 January 31, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Lewis, 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 Community Mental Health Center Services are KRS 194A.030, 194A.050; 42 USC 1396a-d and 42 CFR 440.130.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:044 to allow coverage of substance abuse services; to provide increased access to medically-necessary mental health services under the Medicaid benefit by allowing psychiatric residents and advanced registered nurse practitioners to provide the same services currently limited to the psychiatrist and eliminating the requirement that treatment services be received in order for the CMHC to receive compensation for the provision of diagnostic evaluations and testing; to reinstate persons deemed "professional equivalents" and "mental health associates" as being eligible for Medicaid reimbursement; and to make minor policy clarifications and technical corrections.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the eligibility criteria, provider participation requirements, covered services and limitations in coverage for community mental health benefits under the Medicaid Program, and other minor policy clarifications.

(d) The benefits expected from administrative regulation are: increased access for Medicaid consumers to community mental health services.

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

December 15, 2000

(1) **907 KAR 1:479**, Durable medical equipment covered benefits and reimbursement.

(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 January 31, 2001 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 January 31, 2001, the public hearing will be canceled.

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

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

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 durable medical equipment are KRS 194A.030, 194A.050, 205.560, and 42 USC 1396a, b, d.

(b) The administrative regulation the Department for Medicaid Services intends to promulgate will clarify coverage issues, payment methodology, prior authorization and documentation requirements for durable medical equipment, orthotics, prosthetics and medical supplies.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation clarifies coverage issues, payment methodology, prior authorization and documentation requirements for durable medical equipment.

(d) The benefits expected from this administrative regulation are: Improved access to quality care for recipients and a fair reimbursement and prior authorization process for suppliers.

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

December 15, 2000

(1) **907 KAR 3:005**, Physicians' 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 January 31, 2001 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 January 31, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Lewis, 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 physicians' services are KRS 194A.030, 194A.050, CFR 440.50, 415.152, 415.174 and 415.184.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 3:005, Physicians' services, to remove limits on the number of administration fees for injectable cancer chemotherapy drugs for which a physician may receive reimbursement per recipient, per date of service, to remove limits on the administration of injectable vaccines, and to make minor policy clarifications and technical changes.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes criteria for coverage of the administration of injectable cancer chemotherapy and injectable vaccines.

(d) The benefits expected from this administrative regulation are: improved relations and operations between Kentucky Medicaid and program participating physicians as a result of updated coverage policies which allow for payment of services constituting standard medical practice.

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

November 16, 2000

(1) **907 KAR 3:010**, Reimbursement for physicians' 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 January 31, 2001 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 January 31, 2001, the public hearing will be canceled.

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

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(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 reimbursement for physicians' services are KRS 194A.030, 194A.050, 42 CFR 440.50, 447 Subpart B, and 42 USC 1396 a, b, c, d, s.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 3:010, Reimbursement for physicians' services to incorporate new policy which removes limits on coverage of the number of administration fees for injectable cancer chemotherapy drugs for which a physician may receive reimbursement per recipient per date of service, to allow for expanded coverage of the administration of injectable vaccines, and to make minor policy clarifications and technical changes.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation provides for expanded reimbursement for the administration of injectable cancer chemotherapy and injectable vaccines provided in the outpatient setting.

(d) The benefits expected from this administrative regulation are: improved relations and operations between Kentucky Medicaid and program participating physicians as a result of updated reimbursement policies which allow for payment of services constituting standard medical practice.

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

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

December 15, 2000

(1) **922 KAR 2:170.** Quality rating system for Type I licensed child care centers.

(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 January 31, 2001, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to January 31, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (fax).

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

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

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

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

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

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

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

(a) The statutory authority for the promulgation of an administrative regulation relating to the quality rating system is KRS 199.8943.

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

1. Establish a voluntary quality-based graduated child-care rating system for type I licensed child care facilities;

2. Establish time frames for review of rating levels;

3. Establish an appeals process in accordance with KRS Chapter 13B;

4. Establish a reevaluation process to redetermine a type I licensed child care center's rating;

5. Establish monetary incentives, to the extent funds are available, that are tied to the quality rating system. The monetary incentives shall include a quality rate differential for children served by the Child Care Assistance Program in accordance with 922 KAR 2:160 and a one-time merit achievement award pursuant to KRS 199.8941;

6. Incorporate recommendations made by the Early Childhood Development Authority pursuant to KRS 199.8941 and 199.8943; and

7. Incorporate necessary forms by reference and other necessary policy recommendations in compliance with KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The function of this new administrative regulation shall be to comply with the legislative intent of HB 706 of the 2000 General Assembly. This administrative regulation shall establish criteria for implementation of the voluntary quality-based graduated child care rating system.

(d) The benefit expected from this administrative regulation is: The benefit from promulgating this new administrative regulation is to promote the expansion of quality child care, which shall benefit Kentucky's children and families that utilize child care services.

(e) The administrative regulation will be implemented as follows: By the Department for Community Based Services, Cabinet for Families and Children and Office of Inspector General, Cabinet for Health Services.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, DECEMBER 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. 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
(Emergency Amendment)

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: November 22, 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 establishes the 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 established 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 the Sunday closest to January 20 ~~[January 23, 2000].~~

(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; and

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, 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 February 4 ~~[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 5 ~~[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. If the Canada goose season closes on or after February 4 in the part of Fulton County in the Western Goose Zone, then the Conservation Snow Goose Season will open one-half (1/2) hour before sunrise on the day following the Canada goose season.

(3) Canada goose season dates shall be from the starting date listed below through January 31, 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; and~~

~~2. January 23 in the Ballard Reporting Area.~~

(a) ~~[(b)]~~ The season shall not open until:

1. December 2 ~~[4]~~ in the Western Goose Zone, including the portion of Fulton County which is in the Western Goose Zone;

2. December 16 ~~[11]~~ in the Ballard Reporting Area;

3. December 13 in the Eastern Goose Zone;

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

5. December 28 in the West-Central Kentucky Hunt Zone; and

6. January 16 ~~[23]~~ in the Northeast Kentucky Hunt Zone.

(b) ~~[(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;

(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; and

(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 Hunt Zone during a Canada goose season;

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

(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: November 5 [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;

(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 Canada geese in the Ballard Reporting Area before January 31 [23], dark goose hunting shall cease in the Ballard Reporting Area.

(2) If hunters reach a quota of 3,200 Canada geese in the Henderson-Union Reporting Area before January 31 [36], dark goose hunting shall cease in the Henderson-Union Reporting Area.

(3) In a county associated with the Ballard Reporting Area and 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: August 4, 2000

FILED WITH LRC: November 22, 2000 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Fields

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the waterfowl hunting seasons.

(b) The necessity of the administrative regulation: This administrative regulation is necessary in order to effectively manage the waterfowl populations within the federal framework and to increase hunting opportunities.

(c) How does this administrative regulation conforms with the authorizing statute. This is the very type of administrative regulation that is necessary to conform with the authorizing statute. It sets the specific dates and requirements for waterfowl hunting.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation is necessary to implement the statutes by giving specific dates and locations for the general principles set forth in the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This emergency amendment shifts the seasons according to the calendar and the federal framework.

(b) The necessity of the amendment to this administrative regula-

tion. This amendment is necessary in order to comply with the federal framework.

(c) How does the amendment conform to the authorizing statutes. This amendment conforms to the authorizing statutes by being the type of subject matter that is to be regulated and by promoting good wildlife management while creating safe hunting opportunities.

(d) How the amendment will assist in the effective administration of the statutes. This amendment will assist the statutes by allowing for hunting opportunity while preventing possible hunter conflicts and by giving the specific information for the hunter.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Approximately 45,000 hunters buy waterfowl and migratory bird permits annually. All would be eligible for this hunt. Any business that supplies hunters would be impacted.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Waterfowl hunters will be positively impacted by hunting opportunities. Businesses that supply the hunter should be positively economically impacted through increased business through increased hunter participation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be negligible additional cost to the agency to implement this administrative regulation. The only additional costs will be adding it to our existing promotional material and ensuring adequate enforcement.

(b) On a continuing basis: Same as above.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. There will be negligible additional cost. All cost associated will be cost already absorbed by the agency, such as publication of the seasons and restrictions and enforcement. These costs are covered through the Trust and Agency Fish and Game Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There is no anticipated increase in fees or funding by this change.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was used in setting different seasons dates for this one particular wildlife management areas, because it is the only area with a pheasant quota hunt. Specific season dates or other requirements for wildlife areas allow public recreation while at the same time helping protect the flora and fauna of these areas.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21

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

3. Minimum or uniform standards contained in the federal mandate. The federal waterfowl frame work allows states to establish youth waterfowl hunting.

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

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

STATEMENT OF EMERGENCY

301 KAR 2:222E

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 agen-

cies, 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. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for 301 KAR 2:222 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
(Emergency Amendment)**

301 KAR 2:222E. Waterfowl hunting requirements.

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)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Parts 20, 21
EFFECTIVE: November 22, 2000

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. Waterfowl seasons in the Ballard Wildlife Management Area, Cane Creek Wildlife Management Area, Cumberland Lake Wildlife Management Area, Addington Enterprises [Cyprus-AMAX] Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbank Wildlife Management Area differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.

Section 1. Definitions. (1) "Blind" means:

- (a) A concealing enclosure.
- (b) A pit.
- (c) A boat.

(2) "Party" means:

- (a) A person hunting alone; or
- (b) From two (2) to four (4) persons who share a blind.

(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(4) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

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

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing shot:
 - (a) Made of lead;
 - (b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
 - (c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:

- (1) A waterfowl hunter shall:
 - (a) Hunt from a blind unless hunting in flooded, standing timber.
 - (b) Not hunt from or establish a blind:
 - 1. Within 100 yards of another blind; or
 - 2. Within fifty (50) yards of a property line.
 - (c) Not possess more than one (1) shotgun while in a blind.
 - (2) More than five (5) persons shall not occupy a blind.
 - (3) The requirements of subsection (1) of this section shall not apply after Canada goose season closes.

Section 4. (1) Except as specified in this section or in Section 5 of

this administrative regulation, on a wildlife management area:

(a) A waterfowl hunter shall not establish or hunt from:

- 1. A permanent blind.
- 2. A blind within 200 yards of:
 - a. Another blind; or
 - b. A waterfowl refuge.

(b) A person shall not hunt in a designated recreation area or access point.

(c) More than four (4) persons shall not occupy a blind.

(d) A hunter shall remove decoys and personal effects from the wildlife management area daily, except that a hunter drawn for a multiday hunt may leave decoys in place for the duration of his hunt.

(2) A person wishing to establish a permanent blind on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake or Taylorsville Lake Wildlife Management Areas:

(a) Shall first obtain a permit from the U. S. Army Corps of Engineers.

(b) May designate one (1) other person as a partner.

(c) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, or Taylorsville areas.

(d) Shall present a valid hunting license at the time of the drawing.

(e) Shall not hold more than one (1) permit per area.

(3) The holder of a blind permit shall:

(a) Construct his blind before November 20 or forfeit the permit.

(b) Not lock a blind.

(c) Unless an extension of time is granted, remove his blind within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.

(4) A blind not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-serve basis.

(5) A blind restriction specified in this section shall not apply to a falconer if a gun or archery season is not open.

Section 5. On a wildlife management area:

(1)(a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.

(b) If specific hunting dates are given in this section, a person shall not hunt waterfowl except on those dates.

(c) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.

(2) A person shall not:

(a) Hunt on an area or portion of an area marked by a sign as closed to hunting;

(b) Enter an area or a portion of an area marked by signs as closed to public access; or

(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County.

(a) A person shall not:

1. Have more than fifteen (15) shotgun shells in one (1) day while waterfowl hunting; or

2. Hunt past 12 noon.

(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Barlow Bottoms WMA.

(c) At Ballard Wildlife Management Area:

1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.

2. The duck, coot, and merganser season shall be:

a. December 20 [16] through January 21 [17]; or

b. Until the Ballard Reporting Area Canada goose quota is reached.

3. The goose season shall be:

a. December 20 [16] through January 31 [24]; or

b. Until the Ballard Reporting Area Canada goose quota is reached.

4. A waterfowl hunter shall not hunt on a Monday, Tuesday, Christmas Day, or New Year's Day.

5. A waterfowl hunter shall:

a. Apply in advance in accordance with Section 6 of this administrative regulation;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

b. Case his gun while using department-supplied transportation to and from a blind; and

c. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.

(d) At Barlow Bottoms Wildlife Management Area, including the Olmsted [Lower Bottoms], Peal and Swan Lake units:

1. A person shall:

a. Not hunt on a Monday or Tuesday; and

b. Check in and out daily at the designated check station during duck and Canada goose season.

2. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.

3. A blind shall be made offered to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.

4. A person shall not, on Olmsted [Lower Bottoms] unit:

a. Hunt waterfowl except from a permanent department blind;

b. Be on the area after 1 p.m. during a waterfowl season, except as authorized by the department; and

c. Hunt waterfowl except from a blind assigned by the department during Canada goose season.

5. On the Peal unit:

a. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

b. More than four (4) parties shall not hunt at the same time on Fish Lake;

c. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

6. On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose other than a Canada goose except from a blind assigned by the department and unless:

a. The season for these species is open; and

b. The season for Canada goose is also open.

(4) Barkley Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A person shall establish a permanent blind within ten (10) yards of his assigned and numbered blind marker within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);

a. Including the row of islands on the west side of the main river channel; and

b. Not including Taylor Bay and Jake Fork Bay.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, a person shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) A waterfowl hunter:

1. May use a breech-loading shotgun along the shoreline of the Peninsula Unit.

2. Shall not use a breech-loading firearm elsewhere on the area.

(6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(7) Cane Creek Wildlife Management Area shall be closed to goose hunting.

(8) Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 14 [15].

(9) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(10) Addington Enterprises [Cyprus-AMEX] Wildlife Management Area shall be closed to waterfowl hunting.

(11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) From the shore of the state park; or

(d) On Deer Creek Fork of Grayson Lake.

(12) Green River Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond.

2. The eastern one-third (1/3) of Smith Bay.

3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center.

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake;

or

2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A waterfowl hunter shall remove decoys and personal effects daily.

(15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.

(16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(17) Ohio River Waterfowl Refuge.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

(18) Peabody Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.

2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs.

3. Homestead, as bounded by the haul road and the Green River.

(19) Pioneer Weapons Wildlife Management Area. A waterfowl hunter:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake.

(b) Shall not use a breech-loading firearm elsewhere on the area.

(20) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(21) Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) On the Grassy-Pond Powell's Lake Unit, a waterfowl hunter:

1. Shall use a permanent blind provided by the department.
2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily.

(c) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(d) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds.
2. Shall not hunt closer than 200 yards from another boat.

(e) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.

2. May occupy a blind not claimed by the permittee one (1) hour before sunrise.

3. Shall not have more than fifteen (15) shotgun shells in one (1) day.

4. Shall be accompanied by an adult if under eighteen (18) years of age.

(f) The Crenshaw and Duncan ~~II~~ tracts of the Sauerheber Unit shall be closed to hunting except waterfowl from November 1 [~~October 15~~] through March 15.

(g) The remainder of the Sauerheber Unit shall be closed to the public from November 1 [~~October 15~~] through March 15.

(22) Taylorsville Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 through the last day of February, except for quota deer hunting.

(23) Westvaco Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.

(c) A person shall obtain a Westvaco Permit before hunting.

(24) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.

(25) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard, Barlow Bottoms or the Sauerheber unit of Sloughs wildlife management areas shall:

(a) Apply on a form provided by the department.

(b) Submit a completed application form before the deadline date on the form.

(2) A form which is not completed according to the instructions on the form shall be disqualified from the drawing.

(3) A person shall not apply more than one (1) time for each hunt.

(4) Each hunter drawn may bring up to three (3) additional hunters.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Sloughs Wildlife Management Area Waterfowl Hunting Application", (August, 1997 edition), Department of Fish and Wildlife Resources;

(b) "Ballard Wildlife Management Area Goose Hunt Application", (August, 1997 edition), Department of Fish and Wildlife Resources; and

(c) "Application for Lower Bottoms/Swan Lake Waterfowl Blind Drawings in Ballard County", (August, 1997 edition), Department of Fish and Wildlife Resources.

(2) This material may be inspected, copied or obtained at Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. through 4:30 p.m.

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

APPROVED BY AGENCY: August 4, 2000

FILED WITH LRC: November 22, 2000 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Fields

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the waterfowl hunting seasons.

(b) The necessity of the administrative regulation: This administrative regulation is necessary in order to effectively manage the waterfowl populations within the federal framework and to increase hunting opportunities.

(c) How does this administrative regulation conforms with the authorizing statute. This is the very type of administrative regulation that is necessary to conform with the authorizing statute. It sets the specific dates and requirements for waterfowl hunting.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation is necessary to implement the statutes by giving specific dates and locations for the general principles set forth in the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This emergency amendment shifts the seasons according to the calendar and the federal framework.

(b) The necessity of the amendment to this administrative regulation. This amendment is necessary in order to comply with the federal framework.

(c) How does the amendment conform to the authorizing statutes. This amendment conforms to the authorizing statutes by being the type of subject matter that is to be regulated and by promoting good wildlife management while creating safe hunting opportunities.

(d) How the amendment will assist in the effective administration of the statutes. This amendment will assist the statutes by allowing for hunting opportunity while preventing possible hunter conflicts and by giving the specific information for the hunter.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Approximately 45,000 hunters buy waterfowl and migratory bird permits annually. All would be eligible for this hunt. Any business that supplies hunters would be impacted.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Waterfowl hunters will be positively impacted by hunting opportunities. Businesses that supply the hunter should be positively economically impacted through increased business through increased hunter participation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be negligible additional cost to the agency to implement this administrative regulation. The only additional costs will be adding it to our existing promotional material and ensuring adequate enforcement.

(b) On a continuing basis: Same as above.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. There will be negligible additional cost. All cost associated will be cost already absorbed by the agency, such as publication of the seasons and restrictions and enforcement. These costs are covered through the Trust and Agency Fish and Game Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There is no anticipated increase in fees or funding by this change.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was used in setting different seasons dates for this one particular wildlife management areas,

because it is the only area with a pheasant quota hunt. Specific season dates or other requirements for wildlife areas allow public recreation while at the same time helping protect the flora and fauna of these areas.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21
2. State compliance standards. State seasons and bag limits are within the federal frameworks.
3. Minimum or uniform standards contained in the federal mandate. The federal waterfowl frame work allows states to establish youth waterfowl hunting.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

STATEMENT OF EMERGENCY 907 KAR 1:044E

This emergency administrative regulation is being promulgated to permit psychiatric residents and nurse practitioners (ARNPs) to render services in the community mental health centers (CMHCs). Currently, community mental health centers are limited in the amount and number of mental health services that can be provided on a daily basis because of the restriction to only allow a psychiatrist to render services that could be provided by a psychiatric resident or a psychiatric ARNP. This amendment also allows for reimbursement to the CMHCs for medically necessary psychiatric evaluations and psychological testing when the recipient does not require further services and allows for the CMHCs to hire staff in professional equivalent and mental health associate positions. This action allows more people in need of mental health services to access these services in a timely manner. Thus, ensuring individuals who pose a risk to self or others will have access to medically-necessary services. 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 and citizens of the Commonwealth. This emergency administration regulation differs from the emergency administrative regulation on the same subject matter filed on May 5, 2000 as follows: This emergency administrative regulation allows a psychiatric resident to render the same services as a psychiatrist, recipients to receive psychiatric evaluations and psychological testing as entitled, and reinstates the status of professional equivalent and mental health associate positions. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JIMMY D. HELTON, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Behavioral Health Programs (Emergency Amendment)

907 KAR 1:044E. Mental health center services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 42 CFR 440.130, 42 USC 1396a-d

EFFECTIVE: December 15, 2000

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance]. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to services provided by Mental Health Centers

for which payment shall be made by the Medicaid Program on behalf of [to] both the categorically needy and the medically needy.

Section 1. Definitions. [Definition of Psychiatric Nurse:] (1) "Advanced registered nurse practitioner" or "ARNP" means a person who is licensed in accordance with KRS 314.042 and works under the supervision of a psychiatrist.

(2) "Advanced registered nurse practitioner certified as a psychiatric-mental health clinical nurse" or "psychiatric ARNP" means a person who acts within the scope of practice in a psychiatric-mental health specialty and who is licensed in accordance with KRS 314.042.

(3) "Affiliation agreement" means a cooperative agreement between two (2) agencies without an exchange of cabinet funds.

(4) "Cabinet" means the Cabinet for Health Services.

(5) "Certified psychologist with autonomous functioning" or "certified psychologist" means a person certified in accordance with KRS 319.056.

(6) "Certified social worker" means a person certified in accordance with KRS 335.080.

(7) "Clinical supervision" means monitoring and oversight of the delivery of a mental health service in a clinical or rehabilitative setting, by a supervisor who is licensed or certified in a mental health field, and is consistent with applicable requirements of the respective boards for those person's who may be seeking licensure or certification.

(8) "Community mental health center" or "CMHC" means a facility licensed in accordance with 902 KAR 20:091.

(9) "Department" means the Department for Medicaid Services.

(10) "Individual" means a person who has applied for medical assistance and has been determined to have met applicable conditions for eligibility pertaining to Kentucky's Medicaid Program.

(11) "Licensed psychologist" means a person licensed in accordance with KRS 319.050.

(12) "Licensed clinical social worker" means a person licensed in accordance with KRS 335.100.

(13) "Mental health associate" means a person who:

(a) Meets the requirements in subsection (16)(c) and (d) of this section; and

(b) Has a minimum of a bachelor's degree in a mental health field.

(14) "Mental health field" means a scope of learning and practice designed to prepare a person to treat mental illness or emotional disability including a degree with a major in counseling other than educational guidance counseling, expressive therapy, human services, marriage and family studies, psychology, and social work.

(15) "Physician" means a person licensed in accordance with KRS 311.530 and who works under the supervision of a psychiatrist.

(16) "Professional equivalent" means a person who:

(a) Does not meet the minimum qualifications of the professionals found in Section 3(1)(b)2a through i of this administrative regulation;

(b) Has the following combination of education and experience in the delivery of direct mental health services billable to Medicaid in one (1) or more of the following mental health services while employed by a CMHC:

1. Therapeutic rehabilitation program;

2. Individual, group, family and collateral outpatient therapies; or

3. Intensive in-home services;

(c) Is under clinical supervision documented in his personnel file in accordance with a policy and procedure for clinical supervision approved by the center's board of directors;

(d) Has been approved for the delivery of an outpatient service by the director of the center; and

(e) Has been determined by the department through the Professional Equivalency Review Committee to meet the minimum qualifications to be deemed a professional equivalent.

(17) "Psychiatric nurse" means a person who:

(a) Has received a master of science in nursing with a specialty in psychiatric or mental health nursing;

(b) Is a graduate of a four (4) year nursing educational program with a bachelor of science in nursing and who has one (1) year of experience in a mental health setting;

(c) Is a graduate of a three (3) year nursing educational program and who has two (2) years of experience in a mental health setting;

(d) Is a graduate of a two (2) year nursing educational program

with an associate degree in nursing and who has three (3) years of experience in a mental health setting; or

(e) Is certified by the American Nursing Association as a psychiatric or mental health nurse.

(18) "Psychiatric resident" means a licensed physician enrolled in a psychiatric residency program who has completed at least one (1) full year of psychiatric residency training, and is providing services under the employment or a contract with the CMHC.

(19) "Psychiatrist" means a person 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 by the American Board of Psychiatry and Neurology or American Board of Osteopathic Neurologists and Psychiatrists, Inc.

(20) "Psychological associate" means a person certified in accordance with KRS 319.064.

(21) "Subcontract" means an agreement between the provider and other agencies which involves cabinet funds and meets the requirements established in 908 KAR 2:060, Section 3.

(22) "Treatment plan" means a written plan of care based on an assessment of the medical, psychological, social, behavioral, developmental and cultural aspects of an individual and the need for treatment that lists measurable short term and long term goals and documents the involvement of the individual.

Section 2. Provider Participation Requirements. In order to provide community mental health center services pursuant to Section 3 of this administrative regulation, a provider shall be:

(1) A CMHC that is eligible to participate in the Medicaid Program:

(a) Providing services:

1. Directly; or

2. Indirectly through a subcontract that requires a subcontractor to meet the provisions of this administrative regulation; or

(b) An out-of-state provider that shall:

1. Be a facility licensed to provide community mental health services by the state in which it is located;

2. Participate in that state's Title XIX Medicaid Program; and

3. Provide services that meet the requirements of 42 CFR 431.52; and

(2) Responsible for the following:

(a) A screening interview with an individual that includes information on the individual's:

1. Current mental health status; and

2. Purpose for seeking services;

(b) A comprehensive psychosocial history that addresses pertinent medical, mental health, cultural and social information as appropriate to determine the individual's needs to develop a plan of care;

(c) A staffing conference following the screening to discuss the individual's needs, establish a diagnosis or clinical impression, recommend additional evaluations and formulate a treatment plan as defined in Section 1(22) of this administrative regulation.

1. The treatment plan shall be reviewed and signed by a:

a. Psychiatrist;

b. Licensed psychologist;

c. Psychologist with autonomous functioning;

d. Licensed clinical social worker;

e. Psychiatric ARNP; or

f. Psychological associate if within the scope of practice in accordance with 201 KAR 26:171;

2. The treatment plan shall be reviewed at a minimum of every three (3) months for therapeutic rehabilitation program services and annually for all other services; and

3. All treatment plan reviews shall be documented and maintained in the individual's medical record; and

(d) Submitting the following documentation to the department for persons to be deemed a professional equivalent:

1. A cover letter stating the individual's name, address, employer, date of employment, current job title and a summary of current duties;

2. A legible copy of an official transcript of undergraduate or graduate degree that establishes the person has an education in a mental health field and a copy of applicable professional license or certification that the person holds; and

3. A letter of recommendation from the clinical supervisor specifying

ing the percent of time spent in the delivery of billable outpatient services established in Section 1(16)(b) of this administrative regulation. [For the purpose of providing Medicaid Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet any of the following criteria:

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required; or

(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or

(c) Graduate of a three (3) year nursing educational program (diploma graduate); and with a minimum of two (2) years of experience in a mental health setting; or

(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or

(e) Effective July 1, 1989, any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) Notwithstanding the preceding, any registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse if their employment with the center continues, for the purpose of providing Medicaid Program reimbursable services.

Section 2. Community Mental Health Manual. The Community Mental Health Manual specifies the conditions for participation, services covered, and limitations for the mental health center services component of the Medicaid Program. The Community Mental Health Manual dated July 1, 1993 is incorporated by reference in this administrative regulation and may be reviewed during regular working hours (8 a.m. to 4:30 p.m. Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.]

Section 3. Covered Services. The following services provided by a provider who meets the requirements established in Section 2 of this administrative regulation shall be covered by the Medicaid Program if medically necessary: [participating mental health centers shall be considered covered when rendered within Kentucky Medicaid Program guidelines as shown in the Community Mental Health Manual:]

(1) Inpatient hospital services. An inpatient hospital service shall be utilized if no other community mental health service is appropriate. An inpatient hospital service may be provided in an acute care hospital that has an affiliation agreement with the CMHC. Inpatient services shall include:

(a) Initial inpatient services. An initial inpatient service shall be a face-to-face service provided by a psychiatrist, psychiatric resident, or psychiatric ARNP before an additional inpatient service is covered, unless the patient is currently receiving community mental health services and is hospitalized for a diagnosis other than a psychiatric diagnosis; and

(b) Additional inpatient services. An additional inpatient service shall be covered if it is provided:

1. Pursuant to a treatment plan; and

2. By a:

a. Psychiatrist or psychiatric resident;

b. Licensed psychologist;

c. Certified psychologist;

d. Psychologist with autonomous functioning;

e. Psychological associate;

f. Licensed clinical social worker;

g. Certified social worker;

h. Psychiatric nurse;

i. Psychiatric ARNP; or

j. Professional equivalent.

(2) Outpatient therapy services.

(a) An outpatient therapy service shall be delivered:

1. On site; which includes a facility owned, leased or donated to the provider; or

2. Off site, which includes the individual's place of residence, a congregate living facility not otherwise reimbursed by Medicaid, a school, a day care center, a senior citizen center or a family resource center.

(b) An outpatient therapy service shall be provided pursuant to the individual's treatment plan; and

1. Provided by a:

- a. Psychiatrist or psychiatric resident;
- b. Licensed psychologist;
- c. Certified psychologist with autonomous functioning;
- d. Licensed clinical social worker;
- e. Psychiatric ARNP; or

2. Provided under the clinical supervision of a person identified in subparagraph 1 of this paragraph, excluding a psychiatric resident, if provided by a:

- a. Certified psychologist;
- b. Psychologist associate;
- c. Certified social worker;
- d. Psychiatric nurse;
- e. Professional equivalent;
- f. Mental health associate.

(c) An outpatient therapy service shall be face-to-face and may include:

1. Individual therapy. Individual therapy shall be a therapeutic intervention with an individual for the purpose of reducing or eliminating the presenting mental health problem of the individual;

2. Group therapy. Group therapy shall be a therapeutic intervention provided to an individual in a group that focuses on subjects relative to all individuals participating and for the purpose of:

- a. Building and maintaining healthy relationships;
- b. Personal goal setting; and
- c. The exercise of personal judgement;

3. Family therapy. Family therapy shall be a therapeutic intervention involving an individual and a member of the individual's household or extended family who has a close association with the individual. A family therapy service shall be for the benefit of the individual and shall be billed under the individual's Medicaid number;

4. Collateral services. A collateral service shall provide counseling or consultation and shall be:

a. On behalf of an individual under twenty-one (21) years of age with a parent, legal representative, school personnel, another person in a position of custodial control or supervision of the individual or other health care professionals responsible for treatment of the individual;

b. Provided if written approval is obtained from the individual in accordance with KRS 214.185 or from a parent or person in a position of custodial control or supervision;

c. Directed toward the needs of the individual; and

d. If delivered to more than one (1) person at the same time, billed as actual time spent on an individual's behalf and billed under the individual's Medicaid number;

5. Intensive in-home services. An intensive in-home service shall be a therapeutic intervention that may include teaching problem solving skills and behavior management. On behalf of an individual under twenty-one (21) years who is at risk of placement outside the home and may be delivered to:

- a. The individual;
- b. The individual's immediate family;
- c. A person who interacts with the individual in the home; and
- d. A person in the family with whom reunification is planned;

6. Home visits. A home visit service shall be provided in the individual's residence if the residence is not otherwise reimbursed by Medicaid. A home visit service may be provided:

a. As part of a beginning assessment in a difficult case;

b. During a family crisis in which immediate intervention is needed;

- c. To provide outreach in a high risk case;
- d. For a homebound individual; or
- e. To help an individual generalize skills in the home setting;

7. Emergency services. An emergency service shall:

a. Provide immediate evaluation and care of an individual in a crisis situation;

b. Be available twenty-four (24) hours a day and seven (7) days a

week; and

c. Result in a referral of the individual to another service covered by this administrative regulation based on the individual's needs;

8. Personal care home services.

a. An outpatient service in a personal care home shall be covered if it is an individual therapy service pursuant to subparagraph 1 of this paragraph or a remotivational or resocialization group activity.

b. If under the supervision of a psychiatrist, a physician or ARNP may provide services to an individual in a personal care home which may include a physical examination and medication management;

9. Substance abuse services. A substance abuse service shall be provided in accordance with 907 KAR 3:110; and

10. Therapeutic rehabilitation services for adults and children under twenty-one (21) years of age. A therapeutic rehabilitation service shall be provided as part of a therapeutic program to restore an individual to the highest functioning level or to prevent unnecessary loss of functioning.

a. The program shall teach effective coping mechanisms and problem solving skills to manage illness and overcome deficits in functioning. A deficit in functioning may be related to a major activity of daily life such as the ability to stay in the least restrictive living situation and to engage in the most integrated community setting.

b. The psychiatric consultant required by 902 KAR 20:091 shall be present at least monthly in the program and shall assume clinical responsibility for each individual.

c. The program shall have direct supervision by a person identified in subsection (1)(b)2 of this section, excluding the psychiatric resident.

(3) Psychiatric evaluations, psychological examinations, and tests. An evaluation, examination, or test shall be for the purpose of determining a diagnosis and recommending a course of treatment.

(a) Psychiatric evaluations and testing shall be performed by a psychiatrist, psychiatric resident or psychiatric ARNP.

(b) Psychological examinations and testing shall be performed by a psychologist within his scope of practice.

(4) Physical examinations. A physical examination of an individual shall be provided by:

- (a) A physician;
- (b) A psychiatrist;
- (c) A psychiatric resident;
- (d) An ARNP; or
- (e) A psychiatric ARNP.

(5) Services in a detoxification setting. A psychiatric service provided by a psychiatrist, psychiatric resident or psychiatric ARNP shall be covered for an individual undergoing detoxification in an acute care hospital.

(6) Medication management.

(a) The prescribing and management of medications shall be by a:

- 1. Psychiatrist;
- 2. Psychiatric resident;
- 3. Physician;
- 4. ARNP; or
- 5. Psychiatric ARNP.

(b) Blood and other laboratory tests and examinations shall be ordered in accordance with generally-accepted standards of medical practice.

Section 4. Service Limitations. (1) The department shall not cover a service to an individual if the diagnosis is deferred for more than three (3) visits.

(2) The department shall not cover a service for an individual with the diagnosis of a speech disturbance that is not symptomatic of a psychiatric illness.

(3) The department shall not cover a group therapy service if provided to an individual in a group larger than twelve (12) persons. Group therapy shall not include:

- (a) Physical exercise;
- (b) Recreational activities;
- (c) General academic or vocational education activities; or
- (d) Social activities.

(4) The department shall not cover individual or group therapy services in excess of three (3) hours per day per individual.

(5) The department shall not cover personal care home services provided by a mental health associate.

(6) The department shall not cover substance abuse services that are not provided in accordance with 907 KAR 3:110.

(7) If an ARNP, psychiatric ARNP, physician, psychiatrist or psychiatric resident performs the same service on the same day to an individual, only one (1) of the services shall be covered.

Section 5. Noncovered Services. The following services shall not be covered:

- (1) Speech therapy;
- (2) A service provided to a resident of a nursing facility;
- (3) A service provided to an individual with mental retardation without documentation of a psychiatric diagnosis other than mental retardation;
- (4) A psychiatric evaluation or psychological testing that is court-ordered;
- (5) A collateral service provided pursuant to Section 3(2)(c)4 of this administrative regulation on behalf of an individual over twenty-one (21) years of age;
- (6) A collateral service with a case manager employed by the CMHC;
- (7) A telephone call or contact;
- (8) Travel time;
- (9) A field trip or other off-site activity;
- (10) A recreational, social or physical exercise activity in an individual or group setting; or
- (11) A general academic or vocational educational service.

Section 6. Medical Records. (1) A provider shall meet the requirements established in 902 KAR 20:091, Section 3(4).

- (2) A medical record shall be:
 - (a) Furnished to the cabinet upon request and made available for inspection and copying by cabinet personnel; and
 - (b) Released in accordance with KRS 194A.060, 434.840 through 434.860, 422.317, and 42 CFR 431 Subpart F.
- (3) Services delivered in accordance with this administrative regulation shall be documented in a medical record maintained for each individual and shall include the following:
 - (a) A dated identification sheet that shall be completed and documented in an individual's record within one (1) working day of his visit and include the following:
 1. An individual's name, address and telephone number;
 2. Emergency contact person;
 3. Referral source;
 4. Health insurance carrier's or other responsible party's name and address;
 5. Social Security number;
 6. Age, sex, and race;
 7. The reason the individual presents for services; and
 8. Personal physician's name, address and telephone number;
 - (b) A signed consent for treatment form;
 - (c) Written approval obtained from the individual in accordance with KRS 214.185, or from a parent or other person in position of custodial control or supervision of an individual receiving a collateral service in accordance with Section 3(2)(c)4 of this administrative regulation;
 - (d) Screening information. The screening interview information including the psychosocial history;
 - (e) A treatment plan. A treatment-plan for a service provided pursuant to Section 3(1) and (2) of this administrative regulation shall be documented in the individual's CMHC medical record;
 - (f) Medical history and examinations. A medical history, physical examination including a mental status evaluation, and treatment rendered shall be documented. If a psychiatric hospital discharge summary has been completed for an individual within ninety (90) days, that summary may be used;
 - (g) Evaluations. Psychiatric, psychological and other evaluations shall be administered in accordance with generally accepted clinical practices;

- (h) Staff notes:
 1. Services shall be individually recorded by the service provider within one (1) working day of provision of the service and shall be documented in the medical record within seventy-two (72) hours. A weekly summary note may be used to document therapeutic rehabili-

tation program services if daily attendance records are maintained.

2. An individual's progress towards meeting the objectives of a treatment plan shall be documented and the individual's symptoms, behavior, reaction to treatment, the intervention, changes in the treatment plan, if applicable, and the need for continued treatment shall be described.

3. If the service is provided in a group setting, a summary of the session's activities may be copied and placed in each group member's record if an individualized note describing an individual's participation, reaction and progress is added. A progress note shall not include the name of any other group member.

4. Documentation shall be recorded and signed by the person providing the service and shall document the start and end time of that service. Initials and typed or stamped signatures are not acceptable.

5. Delivery of a service by a mental health associate is documented by:

- a. The initials of a person providing clinical supervision of a service below the documentation of the service; and
- b. At a minimum of once a month, a summary of a clinical supervisory conference signed by the mental health associate and a person providing clinical supervision of his professional development in his personnel record.

(i) Medications. A medication used in treatment shall be recorded in a staff note and on a medication form if administered by the CMHC staff. A copy of the prescription shall be filed in the individual's medical record;

(j) Diagnosis or clinical impression. The diagnosis or clinical impression shall use the terminology of the Diagnostic and Statistical Manual of Mental Disorders, fourth edition; and

(k) Discharge summary. Upon discharge, a discharge summary shall be required for an individual seen in excess of three (3) visits and shall include significant findings and events during treatment, including a final evaluation regarding progress of the individual toward goals identified on the treatment plan, final diagnosis or clinical impression, and condition on discharge and disposition. A discharge summary shall be entered in the medical record within ten (10) days following discharge.

Section 7. Quality Improvement. A CMHC shall establish a quality improvement program that:

- (1) Is described in a quality improvement plan approved annually by the governing body of the CMHC; and
- (2) Continually evaluates the quality, access, continuity of care and health outcomes of services provided in accordance with this administrative regulation.

Section 8. Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

Section 9. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 10. 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.;

- (2) Outpatient services;
- (3) Therapeutic rehabilitation services;
- (4) Emergency services; and
- (5) Personal care home services;

Section 4. The provisions of this administrative regulation shall be applicable for services provided on or after July 1, 1993.]

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

FILED WITH LRC: December 15, 2000 at 10 am.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: 907 KAR 1:044 specifies the conditions for participation, services covered and limitations for the mental health center services component of the Medicaid Program.

(b) The necessity of this administrative regulation: The amended regulation is necessary to provide increased access to medically necessary mental health services and ensure recipients receive quality services as entitled.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to 42 CFR 440.130, as it establishes benefits for rehabilitative services for persons with mental illness. This regulation conforms to 42 USC 1396a-d, by establishing policy for rehabilitation services to be reimbursed through the Department for Medicaid Services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment establishes the necessary policy to provide for increased access to mental health services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation has been amended to provide increased access to medically necessary mental health services under the Medicaid benefit by allowing psychiatric residents and advanced registered nurse practitioners to provide mental health services currently limited to the psychiatrist. Provisions have also been made to ensure that Medicaid recipients receive quality services as entitled by allowing for the reimbursement of medically necessary psychiatric evaluations and psychological testing without requiring treatment services and to ensure CMHCs receive compensation for the provision of services by persons deemed professional equivalents and mental health associates. The community mental health manual dated July 1, 1993, which was previously incorporated by reference and specified the conditions for participation, services covered and limitations for the mental health center services component of the Medicaid Program has been discontinued. This regulation includes the policies previously contained in this manual, adding definitions and new sections of quality improvement plan, nonduplication and third party liability, appeal rights and incorporation by reference.

(b) The necessity of the amendment to this administrative regulation: The amended regulation is necessary to provide increased access to medically necessary mental health services and ensure recipients receive quality services as entitled.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation conforms to 42 CFR 440.130, as it establishes benefits for rehabilitative services for persons with mental illness. This amended regulation conforms to 42 USC 1396a-d, by establishing policy for rehabilitation services to be reimbursed through the Department for Medicaid Services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the necessary policy to provide for increased access to mental health services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients in need of mental health services. Currently there are 14 regional programs, which may provide services and be reimbursed by Medicaid.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Recipients will have increased access to mental health services as entitled and

Community mental health centers will benefit by receiving compensation for provision of services by professional equivalents and mental health associates. The community mental health centers will be required to establish a quality improvement plan.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Initially no additional funds will be required.

(b) On a continuing basis: Since CMHCs are reimbursed based on historical costs, any fiscal impact that may result will not be realized until the next biennium due to the 2 years it takes before current cost reports are used to determine the amount of reimbursement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal and state matching funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be required for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) 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.

STATEMENT OF EMERGENCY 907 KAR 1:479E

This emergency administrative regulation is being promulgated as a result of widespread complaint by suppliers regarding coverage issues, the prior authorization process, and reimbursement methodology outlined in 907 KAR 1:478E, Durable medical equipment covered services and reimbursement. This action must be taken on an emergency basis to: (a) clarify coverage issues, (b) clarify prior authorization and documentation requirements, and to (c) revise reimbursement methodology. 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 due to decreased access to quality of care and durable medical equipment suppliers. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 12, 2000 as follows: a physician's assistant has been added to the definition of "prescriber"; a physician's assistant will operate within the scope of their employment under the direct supervision of a physician; a request for prior authorization was required within ninety (90) days from the date of service; this time frame will now be lengthened to six (6) months in the proposed emergency administrative regulation. 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 Physical Health (New Emergency)

907 KAR 1:479E. Durable medical equipment covered benefits and reimbursement.

RELATES TO: KRS 205.520, 42 CFR 440.230, 441 Subpart B, 424.57, 42 USC 1396d(r)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.560, 42 USC 1396a, b, d

EFFECTIVE: November 22, 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 provisions relating to coverage and reimbursement requirements for durable medical equipment, medical supplies, prosthetics, and orthotics for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Certificate of medical necessity" or "CMN" means a form or letter required by the Department for Medicaid Services to document medical necessity for durable medical equipment, medical supplies, prosthetics, and orthotics.

(2) "Continuing rental item" means an item that shall be rented instead of being purchased.

(3) "Covered benefit" or "covered service" means an item of durable medical equipment, a prosthetic, an orthotic, or a medical supply for which coverage is provided by the Kentucky Medicaid Program.

(4) "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient. It does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

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

(6) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(7) "DMERC" means durable medical equipment regional carrier.

(8) "Durable medical equipment" or "DME" means equipment which:

- (a) Withstands repeated use;
- (b) Is primarily and customarily used to serve a medical purpose;
- (c) Is generally not useful to a person in the absence of an illness or injury; and
- (d) Is appropriate for use in the home.

(9) "Frequently serviced item" means an item that requires frequent and substantial servicing as determined by the department.

(10) "Health Care Financing Administration" or "HCFA" means the federal agency that designates codes for durable medical equipment, prosthetics, orthotics, and medical supplies.

(11) "HCPCS" means the HCFA Common Procedure Coding System.

(12) "Home" means a place where the recipient resides excluding a:

- (a) Nursing facility;
- (b) Hospital;
- (c) Intermediate care facility for the mentally retarded (ICF-MR); or
- (d) Institution for individuals with a mental disease (IMD) as established in 42 USC 1396d(i).

(13) "Invoice" means an itemized account of charges that are billed to a supplier by a manufacturer or distributor for goods or services provided.

(14) "Medicaid DME Program fee schedule" means a list containing the current Medicaid maximum allowable amount established by the department for a designated item of durable medical equipment, a prosthetic, an orthotic, or a medical supply covered by Medicaid.

(15) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

- (a) Provided in accordance with 42 CFR 440.230;
- (b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;
- (c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;
- (d) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;
- (e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;
- (f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an existing emergency medical condition that is

found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR 441 Subpart B, for recipients under twenty-one (21) years of age.

(16) "Medical supply" means an item that is:

- (a) Consumable;
- (b) Nonreusable;
- (c) Disposable; and
- (d) Primarily and customarily used to serve a medical purpose.

(17) "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories, protein, vitamins, and minerals.

(18) "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.

(19) "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced registered nurse practitioner or physician's assistant who, within the legal scope of clinical practice, orders a medically necessary covered benefit for a recipient.

(20) "Prosthetic" means an item that replaces all or part of the function of a body part or organ.

(21) "Reasonableness" means:

- (a) Whether the expense of the item exceeds the therapeutic benefits which could ordinarily be derived from use of the item;
- (b) Whether the item is substantially more costly than a medically appropriate alternative; and
- (c) Whether the item serves the same purpose as an item already available to the recipient.

(22) "Supplier" means a provider of durable medical equipment, medical supplies, prosthetics, or orthotics.

(23) "Supplier manual" means the current Medicare Region C DMERC DMEPOS Supplier Manual.

(24) "Usual and customary charge" means the amount that a supplier bills to the general public for a specific covered benefit.

Section 2. General Coverage. (1) The department shall base coverage for an item of durable medical equipment, medical supply, prosthetic or orthotic on:

(a) 1. The current Medicare Region C DMERC DMEPOS Supplier Manual; or

2. This section;

(b) Medical necessity;

(c) Reasonableness as determined by the department; and

(d) 42 CFR 440.230(c).

(2) The current Medicare Region C DMERC DMEPOS Supplier Manual is accessible at:

http://www.pgba.com/palmetto/main.nsf/allframesets/pro_dmer.html

(3) HCPCS codes covered by Medicaid shall be listed on the current Medicaid DME program fee schedule and available on the Department for Medicaid Services' web site at:

<http://chs.state.ky.us/chs/dms/>

(4) Coverage for an item of durable medical equipment, a medical supply, a prosthetic, or an orthotic not addressed by the current Medicare Region C DMERC DMEPOS Supplier Manual or within this section shall be based on medical necessity and reasonableness and shall, unless specifically exempted by the department, require prior authorization.

(5) A DME item, medical supply, prosthetic, or orthotic shall require a CMN, unless specifically exempted by the department, that shall be kept on file by the supplier for a period of five (5) years.

(6) If a CMN is not required, a prescriber's order shall be required.

(7) If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall be required to comply with Medicare's CMN requirement, and a separate Medicaid CMN shall not be required.

(8) A CMN shall contain:

- (a) The recipient's name and address;
- (b) A complete description of the item or service ordered;
- (c) The recipient's diagnosis;
- (d) The expected start date of the order;
- (e) The length of the recipient's need for the item;

- (f) The medical necessity for the item;
- (g) The prescriber's name, address, telephone number and Unique Provider Identification Number (UPIN), if applicable; and
- (h) The prescriber's signature and date.

(9) Except as specified in subsections (10) and (11) of this section, a prescriber shall examine a recipient within sixty (60) days prior to the initial order of a DME item, medical supply, prosthetic, or orthotic.

(10) Except as specified in subsection (12) of this section, a prescriber shall not be required to examine a recipient prior to subsequent orders for the same DME item, medical supply, prosthetic, or orthotic unless there is a change in the order.

(11) A prescriber shall not be required to examine a recipient prior to the repair of a DME item, prosthetic, or orthotic.

(12) A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) days prior to the order.

(13) A CMN shall be updated with each request for prior authorization.

(14) The department shall only purchase a new DME item.

(15) A new DME item that is placed with a recipient, initially as a rental item, shall be considered a new item at the time of purchase.

(16) A used DME item that is placed with a recipient, initially as a rental item, shall be replaced by the supplier with a new item prior to purchase by the department.

(17) A supplier shall not bill Medicaid for a DME item, medical supply, prosthetic, or orthotic before the item is provided to the recipient.

Section 3. Special Coverage. (1) An augmentative communication device or other electronic speech aid shall be covered:

(a) If the recipient is permanently unable to communicate through oral speech;

(b) After an evaluation by a speech-language pathologist; and

(c) If prior authorized.

(2) A customized DME item that is uniquely constructed or custom-abricated to meet the medical needs of an individual recipient shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to size or medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if they are medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) It is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) It is prior authorized; and

(d) Nutritional intake is documented on the CMN.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed by a physician for the treatment of an inherited metabolic condition specified in KRS 205.560;

(b) If not covered through the Medicaid Outpatient Pharmacy Program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If prior authorized.

(8) A DME item may be delivered to a hospitalized recipient within two (2) days of the recipient's discharge to home for the purpose of rehabilitative training of the recipient prior to discharge.

Section 4. Coverage of Repairs and Replacement of Equipment.

(1) The department shall not be responsible for repair or replacement

of a DME item, prosthetic, or orthotic if the repair or replacement is covered by an effective warranty.

(2) Reasonable repair to a purchased DME item, prosthetic, or orthotic shall be covered as follows:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If no warranty is in effect on the requested repair; and

(d) In accordance with Section 6(2) of this administrative regulation.

(3) Extensive maintenance, as recommended by the manufacturer and performed by authorized technicians, to purchased equipment shall be considered to be a repair.

(4) The replacement of a medically-necessary DME item, medical supply, prosthetic, or orthotic shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of a DME item, medical supply, prosthetic, or orthotic shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 5. Coverage of Rental Items. The following shall be covered as a continuing rental item:

(1) An apnea monitor;

(2) A respiratory-assist device having bilevel pressure capability with backup rate feature;

(3) A generator for use with a vest airway clearance system;

(4) Oxygen;

(5) A ventilator;

(6) An electric breast pump if medically necessary for the following:

(a) Due to medical separation of mother and infant;

(b) Inability of an infant to nurse normally due to a severe feeding problem; or

(c) An illness or injury that interferes with effective breast feeding; or

(7) An item specified as continuing rental on the Medicaid DME Program fee schedule located at:

<http://chs.state.ky.us/chs/dms/>

Section 6. Limitations on Coverage. (1) The following items are excluded from Medicaid coverage through the DME Program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is primarily and customarily used for a non-medical purpose;

(c) Physical fitness equipment;

(d) Equipment that is designed to serve as a comfort or convenience device for a recipient or a person caring for a recipient;

(e) A home modification;

(f) A medical supply that is essential for use with rental equipment;

(g) Routine maintenance of DME that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(h) Except as specified in Section 7(1)(k) of this administrative regulation, backup equipment; and

(i) An item determined not medically necessary by the department.

(2) An estimated repair shall not be covered if the repair cost equals or exceeds:

(a) The purchase price of a replacement item; or

(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(3) Durable medical equipment and medical supplies shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for individuals with a mental disease and shall not be covered through the durable medical equipment program.

(4) Prosthetics and orthotics shall be included in the facility reim-

bursement for a recipient residing in a hospital and shall not be covered through the Durable Medical Equipment Program.

(5) Prosthetics and orthotics, if not included in the facility reimbursement for a recipient residing in a nursing facility, intermediate care facility for the mentally retarded, or an institution for individuals with a mental disease, shall be covered through the Durable Medical Equipment Program.

Section 7. Prior Authorization Requirements and Process. (1) Prior authorization shall be required for the following:

- (a) An item or repair billed to the department at \$300 or more;
- (b) Rental of equipment;
- (c) A therapeutic shoe or boot;
- (d) Orthopedic shoes;
- (e) An adjustment to a prosthetic or orthotic;
- (f) An augmentative communication device;
- (g) A customized DME item;
- (h) A replacement DME item, prosthetic, or orthotic;
- (i) A nutritional supplement;
- (j) An amino acid modified preparation or a low-protein modified food product;

(k) Rental of a replacement wheelchair or ventilator during a repair to the recipient's primary equipment; or

(l) An item determined by the department to require prior authorization.

(2) If an item requires prior authorization, a supplier shall obtain written authorization for the item:

- (a) Prior to the date of service; or
- (b) Within six (6) months after the date of service.

(3) A recipient shall not be responsible for payment of a DME item, medical supply, prosthetic, or orthotic if the supplier has not completed the prior authorization process within the time frame specified in subsection (2) of this section.

(4) A supplier may obtain a faxed CMN from a prescriber to expedite the prior authorization process.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization may not be subsequently approved.

(6) A supplier shall request prior authorization by mailing or faxing the following information to the department:

- (a) A completed prior authorization form (MAP-9);
- (b) A completed CMN; and
- (c) If requested by the department, additional information required to establish medical necessity.

(7) The following additional information shall be required for prior authorization of a customized item:

- (a) An estimate of the fitting time;
- (b) An estimate of the fabrication time;
- (c) A description of the materials used in customizing the item; and

(d) An itemized estimate of the cost of the item, including the cost of labor.

(8) The following additional information shall be required for prior authorization of a repair to purchased equipment:

- (a) A description of the nature of the repair;
- (b) An itemization of the parts required for the repair;
- (c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the DME supplier stating that the requested repair is not covered by the warranty.

(9) An item shall be prior authorized based on the period of medical necessity not to exceed the frequency guideline for prior authorization specified in the Medicaid DME Program fee schedule located at:

<http://chs.state.ky.us/chs/dms/>

(10) A prior authorization period may be extended upon the provision of a new CMN indicating current medical necessity from the treating prescriber.

(11) Prior authorization by the department shall not be a guarantee of recipient eligibility. Eligibility verification shall be the responsibility of the supplier.

(12) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid

recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

(13) If it is determined by the department to be in the best interest of Medicaid recipients, the department shall have the authority to designate an item of durable medical equipment suitable for use in the home that may be provided, if prior authorized, to a recipient temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services.

(14) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation. If the invoice price differs from the manufacturer's invoice price quote the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services. (1) With the exception of items which require manual pricing, as specified in the Medicaid DME Program fee schedule, reimbursement shall be:

(a) For a purchased item, the lessor of:

1. The maximum allowable amount for the item specified on the current Medicaid DME Program fee schedule; or

2. The supplier's usual and customary charge; and

(b) For a rental item, the lessor of:

1. The maximum allowable rental amount for the item specified on the current Medicaid DME Program fee schedule; or

2. The supplier's usual and customary rental charge.

(2) With the exception of items listed in subsection (9)(b) of this section, items that require manual pricing as specified in the Medicaid DME Program fee schedule shall be reimbursed:

(a) For a purchased item, the lessor of:

1. Invoice plus twenty (20) percent; or

2. The supplier's usual and customary charge; and

(b) For a rental item, the lessor of:

1. Ten (10) percent of the total of invoice plus twenty (20) percent;

or

2. The supplier's usual and customary rental charge.

(3) With the exception of continuing rental items specified in Section 5 of this administrative regulation, if reimbursement for a rental item has been made for a period of twelve (12) months, the item shall be considered to be purchased and shall be the property of the recipient.

(4) The purchase price of a prosthetic or orthotic shall include:

(a) The acquisition cost of the prosthetic or orthotic;

(b) The design cost of the prosthetic or orthotic;

(c) Required visits with a prosthetist or orthotist prior to receipt of the item;

(d) Proper fitting of the prosthetic or orthotic;

(e) Necessary postfitting and adjustment visits for one (1) year after receipt of the prosthetic or orthotic;

(f) A warranty by the prosthetist or orthotist covering a defect in material or workmanship; and

(g) Required modifications for one (1) year after receipt of the prosthetic or orthotic if the modification is not a result of physical growth or excessive change in stump size.

(5) A rental price shall include cost of:

(a) Delivery and pickup;

(b) Routine maintenance;

(c) Shipping and handling; and

(d) Essential medical supplies required for proper use of the equipment.

(6) If a repair to a purchased item utilizes a part with a Medicaid reimbursable HCPCS code, the repair part shall be reimbursed in accordance with subsection (1)(a) of this section.

(7) If a repair to a purchased item utilizes a part without a Medicaid reimbursable HCPCS code, the part shall be reimbursed in accordance with subsection (2)(a) of this section.

(8) Labor costs for a repair shall be billed in quarter hour increments and shall use the appropriate Medicaid reimbursable HCPCS code for labor specified in the Medicaid DME Program fee schedule.

(9) Reimbursement for customized items shall be as follows:

(a) A covered repair to a customized DME item, prosthetic, or orthotic shall be reimbursed in accordance with subsections (6), (7), and (8) of this section;

(b) If an item is individually constructed by the assemblage of modular components or the addition of various accessories that require unique construction, fitting, or alteration to individual specifications and utilizes the Medicaid reimbursable HCPCS code K0108 or L8499, the component shall be reimbursed at the manufacturer's suggested retail price minus twenty-two (22) percent;

(c) Items that use HCPCS codes K0008, K0009, K0013, or K0014 shall be reimbursed at the manufacturer's suggested retail price minus fifteen (15) percent; and

(d) A customized component without a Medicaid reimbursable HCPCS code shall be reimbursed at invoice plus twenty (20) percent not to exceed the supplier's usual and customary charge.

(10) A supplier shall not bill Medicaid an amount exceeding the supplier's usual and customary charge.

(11) Reimbursement shall include instruction and training provided to a recipient by the supplier.

Section 9. Conditions for Provider Participation. A participating DME provider shall:

(1) Have an active Medicare DME provider number and adhere to all health care financing administration supplier standards in accordance with 42 CFR 424.57; and

(2) Meet the requirements for provider participation in the Kentucky Medicaid Program in accordance with 907 KAR 1:671 and 907 KAR 1:672.

Section 10. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form MAP-9, Prior Authorization Form, 12/95 edition", Department for Medicaid Services; and

(b) "Form MAP-1000, Certificate of Medical Necessity, 02/00 edition", Department for Medicaid Services.

(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. through 4:30 p.m.

DENNIS BOYD, Commissioner
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 21, 2000

FILED WITH LRC: November 22, 2000 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez

(1) Provide a brief summary of:

(a) What this administrative regulation does: This proposed regulation is designed to aid the providers and the Department for Medicaid Services (DMS) in the authorization process for durable medical equipment (DME).

(b) The necessity of this administrative regulation: This proposed regulation is necessary for the streamlined delivery of items and services to eligible Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This proposed regulation will enable the DMS, as a part of its statutory function and responsibility, to provide medically necessary items to Kentucky's indigent citizenry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This proposed regulation will assist the DMS in improving the delivery of necessary services (the provision of durable medical items and equipment) to eligible Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation,

provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All of Medicaid's 3,500 DME suppliers and all of the Medicaid recipient population that access DME items or equipment will be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact on the Medicaid DME provider community will be immediate. The entire process - prior authorization, delivery of items and equipment and the reimbursement for this equipment should be improved. Providers have been given more time to coordinate efforts with physicians and DMS. The DME providers and DMS will have fewer documents to process since certificates of medical necessity will only be required every 12 months as opposed to every 6 months.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$367,800

(b) On a continuing basis: \$367,800 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations and collections. Federal funds of \$259,483 (70.55%) and state matching funds of \$108,317 (29.45%) will be spent.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation will not require an increase in fees or funding. Authorization for this change is included in KRS 205.560; however, funding for this initiative was not appropriated. The funding for this initiative is derived from a redirection from funds for current services in the enacted budget. In DMS, it is difficult to control costs in any way other than through a reduction in services, the number of Medicaid eligibles, or reimbursement rates, should it become necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase any fees.

(9) 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.

STATEMENT OF EMERGENCY 907 KAR 3:005E

This emergency administrative regulation is being promulgated to expand coverage for the number of administrations for injectable anticancer drugs provided per recipient per date of service. This action must be taken on an emergency basis to reduce the potential of threat to the public health and welfare. 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 of the potential for constraints on provider participation and insufficient access to medically-recommended treatment for malignant conditions due to the existing policy of limiting coverage of injectable anticancer drugs to one (1) administration per date of service, per recipient. This

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

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 Physical Health (Emergency Amendment)

907 KAR 3:005E. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 42 CFR 440.50, 415.152, 415.174, 415.184

EFFECTIVE: December 14, 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 provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. (1) Except as provided in subsection (2) of this section, a covered service shall be a service furnished by a physician through direct physician-patient interaction in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) A covered service shall include a service furnished by a resident under the medical direction of a teaching physician in accordance with 42 CFR Part 415.

(3) A physician assistant shall be considered the agent of a supervising physician with regard to coverage of a practice-related activity performed within his scope of certification in accordance with 201 KAR 9:175.

(4) For purposes of the Medicaid Program, an oral surgeon shall be:

(a) Treated in the same manner as a physician with regard to coverage for services within his scope of licensed practice; and

(b) Included in a reference to a physician, unless the context in which it is used is to the contrary.

(5) A service which is medically necessary, appropriate and related to the diagnosis and treatment of illness or injury shall be covered with the exception of those services established in Section IV, F, of the Physician's Manual incorporated by reference in this administrative regulation.

Section 2. Additional Limitations. (1) A patient placed in "lock-in" status due to over-utilization shall receive a service from his lock-in provider except in the case of emergency or if he receives a referral from his lock-in provider.

(2) Laboratory procedures.

(a) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 CFR Part 493 and KRS 205.520.

(b) The professional component of a physician laboratory procedure performed by a board certified pathologist in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of a preparation used in an injection shall not be considered a covered benefit, except as specified in Section IV, A, 13 [IV-13] of the Physician Manual.

(4) A telephone contact with a patient shall not be considered a covered benefit.

(5) A service performed or a recipient contact made exclusively by a nurse or another physician's employee shall not be covered under the physicians' services component.

Section 3. Material Incorporated by Reference. (1) The "Physician Manual", November, 2000 [March, 1999] edition, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 406021, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 4. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 30, 2000

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes participation requirements and coverage criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: Promulgation of this administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for the provision of medically necessary health services to the extent and within the scope of coverage allowed by state and federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established by statute for the provision of medically necessary health services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment revises the existing policy for coverage of the administration of injectable anticancer drugs to allow for payment of more than 1 administration of these drugs per recipient, per date of service.

(b) The necessity of the amendment to this administrative regulation: This amendment allows greater access to health services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the provision of medically necessary health services to Medicaid recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify criteria relating to the provision of medically necessary health services to Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All fee for service Medicaid recipients (approximately 480,000) and all physicians enrolled in the Kentucky Medicaid Program (approximately 17,000).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: By eliminating the existing limit on coverage of more than one administration of injectable anticancer drug per date of service, Medicaid recipients requiring treatment for malignant conditions will have greater access to medically necessary health services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None. (An estimated increase of \$28,684 in department expenditures apply to and have been addressed in the companion

ion regulation, 907 KAR 3:010E, Reimbursement for physicians' services.)

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the companion regulation 907 KAR 3:010 will be derived from federal funds of \$20,237 (70.55%) and state matching funds from general fund appropriations and collections amounting to \$8,447 (29.45%).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment. The funding for this initiative is derived from a redirection of funds for current services in the enacted budget. In the Department for Medicaid Services, it is difficult to control costs in any way other than through a reduction in services, eligibles, or reimbursement rates should it become necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish nor increase fees.

(9) 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.

STATEMENT OF EMERGENCY 907 KAR 3:010E

This emergency administrative regulation is being promulgated to expand coverage for the number of administrations for injectable anticancer drugs provided per recipient per date of service. This action must be taken on an emergency basis to reduce the potential of threat to the public health and welfare. 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 of the potential of reduced provider participation and insufficient access to medically-recommended treatment for malignant conditions due to the existing policy of limiting payment of injectable anticancer drugs to one (1) administration per date of service, per recipient. 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 Physical Health (Emergency Amendment)

907 KAR 3:010E. Reimbursement for physicians' services.

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 42 CFR 440.50, 447 Subpart B, 42 USC 1396a, b, c, d, s

EFFECTIVE: November 16, 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 of reimbursement for physicians' services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "EPSDT" means early and periodic screening, diagnosis, and

treatment.

(3) "Resource-based relative value scale (RBRVS) unit" means a value based on the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the costs [prices] of staffing and other resources required to provide the service in an area relative to national average price.

(4) "Screening" means the review of the health and health-related condition of a recipient by a physician to determine if further diagnosis or treatment is needed.

(5) "Usual and customary charge" means the uniform amount which the medical provider charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. (1) Except as specified in Section 3 of this administrative regulation, payment for a covered physician's service shall be based on the physician's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using a Kentucky Medicaid Fee Schedule developed from a resource-based relative value scale (RBRVS). If there is not an RBRVS based fee, the department shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology.

(2) A RBRVS unit shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. The dollar conversion factors shall be as follows:

| Types of Service | Kentucky Conversion Factor |
|--------------------------------------|----------------------------|
| Deliveries | Not Applicable |
| Anesthesia (except Delivery-related) | \$29.02 |
| All Other Services | \$29.67 |

Section 3. Reimbursement Exceptions. The following reimbursement exceptions shall apply [as established in the Physicians Manual].

(1)(a) The department shall reimburse a physician a three (3) dollar and thirty (30) cent administration fee for a vaccine administered to a Medicaid recipient under the age of twenty-one (21) up to three (3) administrations per physician, per recipient, per date of service.

(b) The department shall not reimburse a physician for the cost of a vaccine which is available free through the Vaccines for Children Program in accordance with 42 USC 1396s.

(c) There shall be no limit on the number of administration fees for injectable anticancer drugs for which a physician may receive reimbursement per recipient per date of service.

(2)(a) A payment for the following specified obstetrical services shall be reimbursed the lesser of:

1. The actual billed charge; or
 2. A [The] standard fixed fee paid by type of procedure.
- (b) The obstetrical services and fixed fees shall be:
1. Vaginal delivery only, \$870;
 2. Vaginal delivery including postpartum care, \$900;
 3. Cesarean delivery only, \$870; and
 4. Cesarean delivery including postpartum care, \$900.

(3)(a) For a delivery-related anesthesia service [services], a physician shall be reimbursed the lesser of:

1. The actual billed charge; or
2. A standard fixed fee paid by type of procedure.

(b) Delivery-related anesthesia procedures and standard fixed fees shall be:

1. Vaginal delivery, \$200;
2. Epidural single, \$315;
3. Epidural continuous, \$335; and
4. Cesarean section, \$320.

(4) Payment for a service provided to an individual eligible for coverage under Medicare Part B shall be made in accordance with the individual's Medicare deductible and coinsurance liability.

(5) A family practice physician practicing in a geographic area with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physician's usual and customary actual billed charge up to 125 percent of the fixed upper limit per procedure established by the department.

(6) A physician laboratory service shall be reimbursed at [based on] the Medicare allowable payment rate. For a laboratory service with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charge.

(7) A procedure specified by Medicare and published annually in the Federal Register which is commonly performed in the physician's office shall be:

(a) Subject to outpatient limits if provided at an alternative site; and

(b) Paid an adjusted rate to take into account the change in the usual site of service.

(8) A payment for an [the] injection procedure for chemonucleolysis of intervertebral disk, lumbar shall be the lesser of:

(a) The actual billed charge; or

(b) A fixed upper limit of \$793.50.

(9) Certain injectable antibiotics and antineoplastics, and contraceptives shall be reimbursed at the lesser of:

(a) The actual billed charge; or

(b) The average wholesale price of the medication supply minus ten (10) percent.

(10) Specified family planning procedures performed in the physician office setting shall be reimbursed at the lesser of:

(a) The actual billed charge; or

(b) The established RBRVS fee plus actual cost of the supply minus ten (10) percent.

(11) For a practice-related service provided by a physician assistant, the participating physician shall be reimbursed at the lesser of:

(a) The usual and customary actual billed charge; or

(b) Seventy-five (75) percent of the physician's fixed upper limit per procedure.

(12) Reimbursement rates for a screening service provided to a recipient under the age of twenty-one (21) shall be in accordance with the following:

(a) For a complete screening, which shall include all items or procedures listed in 907 KAR 1:034, Section 3, appropriate to the age and health history of the recipient, except the fifth year (kindergarten examination) and 12th year (sixth grade examination), the fee shall be seventy (70) dollars per recipient screened;

(b) For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened;

(c) For a partial screening, which shall include at least a health history and unclothed physical examination, the fee shall be thirty (30) dollars per recipient screened;

(d) For completion of a partial screening with some items or procedures appropriate to the age and health history of the recipient provided as a follow-up to a partial screening as established in paragraph (c) of this subsection, the fee shall be forty (40) dollars per recipient screened;

(e) For an interperiodic screen, which shall be medically necessary to determine the existence of a suspected physical or mental illness and in addition to the regular periodicity schedule screenings, the fee shall be thirty (30) dollars per recipient screened; and

(f) The preestablished fees payable shall not exceed the usual and customary charge of the provider for the service.

Section 4. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 16, 2000 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a methodology for payment to be made by the Department for Medicaid Services for physician services.

(b) The necessity of this administrative regulation: Promulgation of this administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for the provision of medically necessary health services to the extent and within the scope of coverage allowed by state and federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations established by statute for the provision of medically necessary health services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment revises the existing policy for coverage of the administration of injectable anticancer drugs to allow for payment of more than one administration of these drugs per recipient, per date of service.

(b) The necessity of the amendment to this administrative regulation: This amendment allows greater access to health services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the provision of medically-necessary health services to the extent and within the scope of coverage allowed by state and federal law.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify criteria relating to the provision of medically necessary health services to Medicaid recipients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All fee for service Medicaid recipients (approximately 480,000) and all physicians enrolled in the Kentucky Medicaid Program (approximately 17,000).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: By eliminating the existing limit on reimbursement of more than one administration of injectable anticancer drug per date of service, Medicaid recipients requiring treatment for malignant conditions will have greater access to medically necessary health services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$28,684

(b) On a continuing basis: Approximately \$28,684 annually, depending on the level of utilization.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds of \$20,237 (70.55%) and state matching funds from general fund appropriations and collections amounting to \$8,447 (29.45%).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will be unnecessary to implement this amendment. The funding for this initiative is derived from a redirection of funds for current services in the enacted budget. In the Department for Medicaid Services, it is difficult to control costs in any way other than through a reduction in services, eligibles, or reimbursement rates should it become necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish nor increase fees.

(9) 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.

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

OFFICE OF THE ATTORNEY GENERAL
Prosecutors Advisory Council
(As Amended at ARRS, December 12, 2000)

40 KAR 3:010. Payment schedule ~~[to hospitals, physicians and sexual assault nurse-examiners]~~ for medical examination of victims of sexual offenses.

RELATES TO: KRS 216B.400, 314.142, Chapter 510 [(5); (6)]

STATUTORY AUTHORITY: KRS 216B.400(8) [(6)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.400(8) [(6)] requires the Attorney General to promulgate an administrative regulation to determine the rate to be paid to hospitals, sexual assault examination facilities, physicians and sexual assault nurse examiners for the examination of reported victims of sexual offenses. This administrative regulation establishes ~~[the procedures to be included in the examination, and]~~ a standard payment rate for hospitals, sexual assault examination facilities, physicians, and sexual assault nurse examiners for performing the services mandated by KRS 216B.400.

Section 1. ~~[A [An emergency room] medical examination of a reported victim [victims] of sexual offenses shall include a:~~

- ~~(1) Venereal disease reference laboratory (VDRL); [and]~~
- ~~(2) Rapid plasma reagin (RPR); or a gonorrhea culture (GC); and~~
- ~~(3) Other tests relevant to the discovery of the presence of venereal disease.~~

Section 2.] The reimbursement for a physician, sexual assault nurse examiner, hospital, or sexual assault examination facility for performing a sexual assault examination shall be the actual amount billed, not to exceed the following limits:

- (1) A physician or sexual assault nurse examiner - \$200.
- (2) A hospital or sexual assault examination facility [Reimbursement rates for physicians, sexual assault nurse-examiners and hospitals for performing sexual assault examinations shall not exceed the following limits:
- (1) Physicians and sexual assault nurse-examiners—fifty (50) dollars.
- (2) Hospitals] for use of an emergency or examination room - \$250 [thirty-five (35) dollars].
- (3) A hospital or sexual assault examination facility [Hospitals] to perform laboratory tests - ninety-four (94) [thirty-five (35)] dollars.

A. B. Chandler, III, Attorney General
APPROVED BY AGENCY: October 11, 2000
FILED WITH LRC: October 11, 2000 at 4 p.m.

PERSONNEL CABINET
(As Amended at ARRS, December 12, 2000)

101 KAR 2:106. Annual leave sharing procedures.

RELATES TO: KRS 18A.025(3)(c)1.g., 18A.203 [18A-030; 18A-110, HB-265]

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110(1)(h), (2), 18A.203(9) [-HB-265]

NECESSITY, FUNCTION, and CONFORMITY: KRS 18A.203(9) [HB-265] requires the Secretary of the Personnel Cabinet to promulgate procedural administrative regulations to implement the Annual Leave Sharing Program. This administrative regulation establishes the procedures for the Annual Leave Sharing Program established by KRS 18A.203.

Section 1. Definition. ~~[Definitions: (1)]~~ "Employee" is defined by

KRS 18A.005(14). ~~[means any employee in active payroll status in both the classified and unclassified services for whom accurate leave records are kept. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive annual leave under the Annual Leave Sharing Program.~~

~~(2) "Personal property". For purposes of the annual leave sharing program, "personal property" means that a residential fire or natural disaster has caused the employee to suffer damage to his or her residence and its contents of such severity that the employee will have to miss work for not less than ten (10) consecutive work days in order to restore the residence to a habitable condition.]~~

Section 2. Eligibility to Donate or Receive Annual Leave. (1) An employee shall not qualify to donate or receive annual leave under the Annual Leave Sharing Program if the employee:

- (a) Is not in active payroll status; or
- (b) Has:
 1. Resigned;
 2. Retired; or
 3. Been placed in unpaid leave status by a personnel action.
- (2) To request donated annual leave, an employee shall complete an Application for Annual Leave Sharing.
- (3) To donate annual leave, an employee shall complete an Annual Leave Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility by KRS 18A.203 ~~shall [HB-265 may]~~ be leave with or without pay.

(2) The total amount of shared annual leave that may be received or used by an eligible employee for the purposes specified by this administrative regulation shall be limited to 200 work hours.

(3) Annual leave sharing shall not be authorized for mere convenience or employee preference.

(4) Annual leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(5) If [Where] multiple donors donate annual 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 or 200 work hours, whichever is less.

(6) The applicant for annual leave sharing shall be responsible for filing the Application for Annual Leave Sharing [appropriate application].

(7) Donated annual leave shall not be utilized retroactively except to cover the period between ~~[the date the qualifying event took place and]~~ the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(8) The annual leave sharing recipient shall be responsible for monitoring the amount of annual leave donated and used.

(9) Except as provided by subsection (10) of this section, donated annual leave shall be used:

- (a) In the order in which it is donated; and
- (b) On consecutive days. ~~[Donated annual leave shall be used in the order in which it is donated and shall be used on consecutive days except as provided by subsection (11) of this section.]~~

(10) Any leave that an employee accrues while receiving donated annual leave shall be used before donated annual leave.

(11) 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 evidence that the original condition for which annual leave was donated will continue.

(12) If an annual leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the [such] leave shall not be available for

use by the recipient.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for Annual Leave Sharing, December 2000; and

(b) Annual Leave Donation form, December 2000.

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

CAROL M. PALMORE, Secretary

PAUL E. PATTON, Governor

APPROVED BY AGENCY: October 9, 2000

FILED WITH LRC: October 9, 2000 at 2 p.m.

**PERSONNEL CABINET
(As Amended at ARRS, December 12, 2000)**

101 KAR 2:180. Employee performance evaluation system.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS [~~Chapter 13A;~~] 18A.110(1)(i), (7)(i)

NECESSITY, FUNCTION and CONFORMITY: KRS 18A.110(1)(i) and (7)(i) requires the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to **establish a uniform system of annual employee evaluations for classified employees. This administrative regulation establishes the** [~~provide for uniform standards and methods of evaluating work performance of all employees; and for the use of such methods of evaluation in personnel actions involving discretionary salary advancements, promotions, disciplinary actions and for the development and operation of programs to improve work effectiveness of employees. This administrative regulation complies with KRS 18A.110 by establishing a~~] uniform employee performance evaluation system.

Section 1. General Provisions. (1)(a) **Except as provided in paragraph (b) of this subsection**, the annual performance period shall be one (1) calendar year beginning on January 1.

(b) **For calendar year 2001, the annual performance period shall be the effective date of this administrative regulation until the end of the calendar year.**

(2) Performance evaluations shall be completed no later than thirty (30) calendar days after the end of the annual performance period.

(3) All agencies shall use the **Annual Employee** [~~same~~] Performance Evaluation Form.

(4)(a) **Except as provided in paragraph (b) or (c) of this subsection**, the first line supervisor of an employee at the time the evaluation is due shall be the evaluator.

(b) If the first line supervisor has not supervised the employee for [:

~~(a) If he has supervised the employee]~~ ninety (90) calendar days during the performance year, [:

~~(b) If the first line supervisor does not qualify;~~ the next line supervisor who meets the ninety (90) day requirement **shall be** [~~becomes~~] the evaluator.

(c) If an employee changes jobs and reports to a different supervisor after October 1 of the performance year, the annual evaluation shall be completed by the former supervisor prior to the job change.

(5) The first line supervisor (evaluator) shall establish a performance plan for each eligible employee no later than thirty (30) calendar days after the start of the performance period.

(6) The evaluator shall meet with the employee when completing the performance plan to discuss job duties and expectations.

(7) Performance evaluations shall be in writing.

[(a)] The evaluator shall:

(a) Present and explain all documentation relevant to an employee's performance evaluation [~~and~~];

(b) [Shall] Discuss both the positive and negative aspects of performance with the employee at the annual evaluation; [:

(c) [The evaluator shall] Elicit the employee's opinions and concerns; and

(d) [Shall] Discuss measures to improve or enhance performance with the employee.

(8) The Governmental Services Center or agency personnel shall provide training on the performance evaluation system.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to performance evaluation of employees.

(b) The Personnel Cabinet shall monitor and validate compliance with training requirements.

(9) Employees shall complete orientation to the performance evaluation system no later than thirty (30) calendar days after completion of initial probation.

(10) Except as authorized by the appointing authority, an evaluator shall complete required performance planning, interim reviews and annual evaluations for each eligible employee. If the appointing authority approves the exception, written justification for the decision shall be placed in the employee's personnel file.

Section 2. Employee Eligibility. Performance evaluations shall be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job responsibilities and expectations in the following categories:

(a) Job tasks.

1. The job tasks category shall identify specific duties and expectations of the position held by the employee.

2. The employee's job duties shall be consistent with the position description.

3. Duties and expectations shall be in writing.

4. The evaluator shall assign points to identified duties and expectations, weighted by importance.

(b) Adaptability/initiative.

1. The adaptability/initiative category shall identify job requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(c) Communication/teamwork.

1. The communication/teamwork category shall identify requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

(d) Self-management.

1. The self-management category shall identify requirements of the agency relating to workplace standards that shall include:

- a. Attendance;
- b. Punctuality;
- c. Career development;
- d. Responsibility; and
- e. Dependability.

2. The evaluator shall place each requirement under this category in writing and assign points weighted by importance.

3. Performance goals and objectives shall relate to the agency's mission.

4. The evaluator shall develop the performance plan after consultation with **the** employee.

a. The employee and evaluator shall certify in writing in the performance planning section of the evaluation form that the employee has met with the evaluator and is aware of the performance plan at the start of the evaluation period.

b. The next line supervisor shall certify that he has reviewed the duties and expectations of the employee and finds them to be reasonable and equitable considering duties of other employees in the same classification.

(4) Total points assigned for all four (4) categories shall equal 100 total points. The evaluator shall distribute points among the four (4) categories **as follows** [~~provided that~~]:

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

- (a) The job tasks category shall have a minimum of fifty (50) points designated; and [-]
- (b) The other three (3) categories shall have a minimum of five (5) points designated to each category.
- (5) Points assigned to each job duty within each category shall be multiplied by the numerical rating one (one (1) to five (5)) determined by the evaluator to complete the final point total for each category.
- (6) Total points in all four (4) categories shall be added to obtain a final performance evaluation score.

Section 4. Performance Coaching and Feedback. (1) Modification of the performance plan may occur during the performance evaluation period if the changes are consistent with the duties reflected on an employee's position description.

- (a) The employee shall be given written notice of changes to the performance plan.
- (b) Changes to the performance plan shall be indicated on the evaluation form or on a supplemental sheet attached to the form.
- (c) Changes to the performance plan shall be initiated and dated by the evaluator and the employee when changes become effective.
- (2) Two (2) interim reviews shall be required during a performance year.
 - (a) The evaluator shall document the interim reviews.
 - 1. Interim reviews shall not contain a rating.
 - 2. The interim meeting section of the evaluation form shall contain comments by the evaluator.
 - (b) The employee and evaluator shall sign the performance evaluation form to certify that the interim reviews occurred.
 - (c) Except as requested by the appointing authority and authorized by the Secretary of Personnel, the evaluator shall schedule interim reviews during the months of April and August of each performance year.
 - (d) Interim reviews shall document performance to justify the annual performance rating.

Section 5. Performance Evaluations and Ratings. (1) The evaluator and the employee shall meet no later than thirty (30) calendar days after the performance period ends to discuss the performance ratings.

- (2) Eligible employees shall be evaluated in the four (4) categories described in Section 3 of this administrative regulation.
- (3) All job duties identified within the categories shall be rated on a scale of one (1) to five (5), with five (5) representing superior performance.
- (4) The final performance evaluation shall consist of a defined numerical rating. Point values for the overall performance rating are:
 - (a) Outstanding: 450 to 500 points;
 - (b) Highly effective: 350 to 449 points;
 - (c) Good: 250 to 349 points;
 - (d) Needs Improvement: 150 to 249 points;
 - (e) Unacceptable: less than 150 points.
- (5) Unresolved disagreements on ratings or any aspect of the performance evaluation shall be reviewed through the reconsideration process established [detailed] in Section 7 of this administrative regulation.

(6) Signatures of the evaluator, employee and next line supervisor shall be required on the final evaluation.

- (a) The next line supervisor shall sign the evaluation after it is completed, signed and dated by the evaluator and the employee.
- (b) For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he is aware of the evaluation and has reviewed it.
- (c) Exceptions to this requirement may be requested by the appointing authority and shall be subject to the approval of the Secretary of Personnel.

Section 6. Performance Incentives. Employee annual leave shall be awarded as a performance incentive at the following rates:

- (1) Two (2) workdays, not to exceed sixteen (16) hours, for an "Outstanding" rating.
- (2) One (1) workday, not to exceed eight (8) hours, for a "Highly Effective" rating.

Section 7. Reconsideration and Appeal Process. (1) Within five (5)

working days of a performance evaluation, an employee may request initial reconsideration of the performance evaluation by the evaluator.

(2) Within five (5) working days of the receipt of the request for reconsideration, the evaluator shall respond to the request in writing.

(3) If the employee refuses to sign the form in the employee response section, the evaluation shall [will] not be eligible for reconsideration.

(4) Within five (5) working days after the initial reconsideration by the evaluator, an employee may submit a written request for reconsideration of the evaluation by the next line supervisor. If neither the evaluator nor the next line supervisor respond to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for compliance with this administrative regulation.

(5) The next line supervisor shall:

- (a) Obtain written statements from both the employee and the evaluator; [-] or
- (b) Meet individually with the employee and the evaluator.
- (6) The next line supervisor shall inform both the employee and evaluator in writing of the decision no later than fifteen (15) working days after receipt of the employee's request.
- (7) Within sixty (60) days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

- (1) Demote the employee to a position commensurate with the employee's [his/her] skills and abilities; or
- (2) Terminate the employee.

Section 9. Incorporation by Reference. (1) [~~The following material is incorporated by reference:~~] The Annual Employee Performance Evaluation Form, 01/01/01, is incorporated by reference.

(2) This material may be inspected, copies or obtained, [{subject to applicable copyright law}], at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: October 9, 2000

FILED WITH LRC: October 9, 2000 at 2 p.m.

BOARD OF PHYSICAL THERAPY (As Amended at ARRS, December 12, 2000)

201 KAR 22:070. Requirements for foreign-educated [trained] physical therapists.

RELATES TO: KRS 327.040(1), (10), 327.060(2)

STATUTORY AUTHORITY: KRS 327.040(1), (10), 327.060(2)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the requirements a foreign-educated [trained] physical therapist shall satisfy to become licensed in the state of Kentucky. Because of variances in curriculums of foreign countries, specific requirements are needed to insure that the applicant possesses adequate educational and clinical preparation.

Section 1. A foreign-educated physical therapist applicant shall be licensed if the applicant:

(1) Furnishes the board an original favorable educational credentials evaluation report from:

(a) International Credentialing Associates, Inc.; or

(b) International Consultants of Delaware, Inc.;

(2) Has graduated from a recognized physical therapy program in the country in which he was educated. The applicant shall have earned at least 120 semester credits in a program substantially equivalent to an accredited U.S. bachelors degree program in physical therapy, of which at least sixty (60) semester

credits shall be in professional physical therapy courses:

(3) Speaks English as his or her native language or has submitted the results of the Test of Spoken English (TSE) with a total score of at least fifty (50), if seeking licensure by examination;

(4) Provides proof that he or she has attained legal authorization to reside and work without limitations in any US jurisdiction. If required to undergo prescreening for immigration purposes, the board approves use of the Foreign Credentialing Commission on Physical Therapy (FCCPT) or other agencies approved by US Immigration and Naturalization Service to provide this service;

(5) Provides for verification of licensure without limitations directly from the licensing authority in the county of education to an approved credentials evaluation service;

(6) Submits a satisfactorily-completed application and appropriate fee;

(7) Has successfully completed:

(a) Not less than three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist licensed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the board provided clinical skills evaluation form. The clinical supervisor shall submit the evaluation to the board after three (3) months practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program;

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days; or

(b) Three (3) months of supervised practice in a state with licensure requirements at least comparable to those of Kentucky. Evidence of that experience in a comparable facility outside Kentucky shall be in writing confirming successful completion and satisfactory performance; and

(8) Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 327.050. [A foreign-educated [trained] physical therapist shall be licensed if he:

(1) Furnishes the board an original favorable educational credentials evaluation report from:

- (a) International Credentialing Associates, Inc.; or
- (b) International Consultants of Delaware, Inc.; for
- (c) International Education Research Foundations, Inc.;

(2) Has graduated from a recognized physical therapy program in the country in which he was educated. The applicant shall have earned at least 120 semester credits in a program substantially equivalent to an accredited [a] U.S. bachelors degree program in physical therapy, of which at least sixty (60) semester credits shall be in professional physical therapy courses.

(3)(a) If seeking licensure by examination, speak English as his native language or have submitted the results of the Test of Spoken English (TSE) with a total score of at least fifty (50) :

- 1. Fifty-five (55) for an examination taken July 1995 or later; or
- 2. 220 for an examination taken between July 1993 and June 1995.

(b) A score report shall be accepted no longer than two (2) years from the examination date);

(4) If required to undergo prescreening for immigration purposes, the board approves use of the Foreign Credentialing Commission on Physical Therapy (FCCPT) or other agencies approved by U.S. Immigration and Naturalization Service to provide this service;

(5) Has provided proof that he or she has attained legal authorization to reside and work without limitations in any U.S. jurisdiction;

~~(6) Is responsible for assuring that the licensing authority in the country of education has provided directly to an approved credentials evaluation service, verification that the physical therapist applicant is authorized to practice there without limitations;~~

~~(7) Submits a satisfactorily-completed application and appropriate fee;~~

~~(8) [(5)] Has successfully completed not less than three (3) months and no more than six (6) months [one (1) year, totaling at least 1000 clock hours,] of practice under the on-site supervision of a physical therapist licensed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:~~

~~(a) The supervised practice shall be in a facility which is serving as a clinical education site for students enrolled in a [an APTA accredited] program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);~~

~~(b) The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no one (1.0) or two (2.0) on a four (4.0) point scale has been achieved utilizing the board provided clinical skills evaluation form. The clinical supervisor shall submit the evaluation [Evaluations shall be submitted] to the board after three (3) months practice, and if required, after the sixth month, when [quarterly by the clinical supervisor until] the required score denoting clinical competency must have [has] been reached;~~

~~(c) The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE [an APTA] accredited program;~~

~~(d) The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days;~~

~~(e) [The applicant shall work under the supervision required of a U.S. educated physical therapist candidate issued a temporary permit after achieving the required score of three and five-tenths (3.5).] This requirement may be satisfied by three (3) months [one (1) year] of supervised practice in a state with licensure requirements at least comparable to those of Kentucky. Evidence of that experience in a comparable facility outside Kentucky shall be in writing confirming successful completion and satisfactory performance; and~~

~~(9) [(6)(a)] Successfully completes the examination and HIV/AIDS education requirements as specified in KRS 327.050.]~~

~~[(b) Unless excused by the board, after the applicant becomes a candidate for licensure, he shall take the next examination offered by the board for other candidates.~~

~~(c) The foreign-trained physical therapist candidate shall not be required to have his physical therapy records countersigned by the supervising physical therapist.]~~

Section 2. Temporary Permits for Foreign-educated [Trained] Physical Therapist Applicants. (1) An applicant for licensure by examination, or [and] an applicant who has not yet satisfactorily completed three (3) months [a year] of supervised practice as a physical therapist shall be issued a temporary permit to practice under the supervision of a designated Kentucky licensed therapist if he has:

(a) Completed the requirements of Section 1(1) to (6) [(4)] of this administrative regulation; and

(b) Submitted an approved "Supervisory Agreement for Physical Therapists Education in a Foreign Country".

(2) All requirements for licensure shall be completed within six (6) months [one (1) year] from the beginning of the supervised practice. If not completed within that time period, the temporary permit shall be revoked and the applicant shall no longer work in Kentucky as a physical therapist.

Section 3. (1) "Supervisory Agreement for Physical Therapists Education in a Foreign Country 07/14/00 [09/24/91]" is incorporated by reference.

(2) This material [form] may be inspected, copied, or obtained, subject to applicable copyright law, at the board office at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, [between] 8 a.m. to 4:30 p.m.

JOAN S. DALTON, Chairman

APPROVED BY AGENCY: July 13, 2000

FILED WITH LRC: October 13, 2000 at 8 a.m.

**FINANCE AND ADMINISTRATION CABINET
Commercial Mobile Radio Service Emergency
Telecommunications Board of Kentucky
(As Amended at ARRS, June 13, 2000 and
As Amended at Interim Special Subcommittee
On Energy, December 7, 2000)**

202 KAR 6:020. CMRS carrier cost recovery.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(3) requires the CMRS Board to distribute a portion of the revenues deposited into the CMRS fund to CMRS providers (carriers) licensed to do business in the Commonwealth, solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order. This administrative regulation establishes the process by which CMRS carriers may obtain cost recovery for those expenses.

Section 1. A carrier shall file a cost recovery plan with the CMRS Board in order to receive reimbursement for [their] NRCs and RCs.

Section 2. Cost Recovery Plan Submission. (1) Upon receipt of a written request for wireless E9-1-1 service from a PSAP that has been certified by the board in accordance with KRS 65.7631(4)(a), the CMRS carrier shall:

(a) Acknowledge receipt of the request back to the PSAP within thirty (30) days; and

(b) Develop a comprehensive detailed plan for implementation of E9-1-1 service for:

1. The requesting PSAP; or

2. The appropriate service area if the CMRS carrier's switch serves more than one (1) PSAP.

(2) A CMRS carrier shall provide the technical aspects of the plan to the requesting certified PSAP. The CMRS carrier shall submit the plan and the associated cost structure to the board, including a completed "Kentucky CMRS Carrier Data Sheet". The board shall request from the carrier, if necessary to reach a decision:

(a) Additional information; or

(b) A presentation.

(3) Only carrier costs directly attributable to wireless E9-1-1 call completion shall be considered for recovery, in accordance with Section 8 of this administrative regulation.

Section 3. Cost Recovery Plan Requirements. A plan submitted to the board shall contain the following information:

(1) The carrier's good faith estimate of its total cost recovery reimbursement claim for providing Phase I wireless E9-1-1 service in the area served by the requesting PSAP or the appropriate service area for the carrier's switch;

(2) Specific detail for each NRC and RC the carrier expects to recover;

(a) An RC shall be described as subscriber-based or nonsubscriber-based;

(b) An RC shall be based on a calendar month. If a carrier chooses a different period on which to base its RCs, the period used and the logic employed shall be identified;

(3) A description of the Phase I technology solution the CMRS carrier has elected to implement and the projected implementation dates;

(4) A map or other detailed description of the coverage area affected by the plan;

(5) A list of the PSAPs affected by the carrier; and

(6) The method by which the carrier will identify the persons authorized to submit sworn paid invoices to the board for reimbursement.

Section 4. Cost Recovery Plan Approval. (1) A cost recovery plan submitted to the CMRS Board shall be stamped "Confidential" and proprietary information received shall be filed and maintained so as to preserve its confidentiality in accordance with KRS 65.7639.

(2) A cost recovery plan submitted to the board shall be approved or disapproved within ninety (90) days of its receipt by a simple majority vote of the board.

(3) Within ten (10) business days of its approval or disapproval, notice of the decision shall be sent to the carrier and affected PSAPs, in writing, by certified mail, return receipt requested.

Section 5. Rejection of a Cost Recovery Plan. (1) If a plan is rejected, the board shall include with the decision specific reasons for its rejection

(2) The carrier may submit a revised plan to the board.

(3) The carrier may appeal the board's rejection in accordance with **KRS Chapter 13B [202-KAR-6:040]**.

Section 6. Implementation of Additional Service Using an Approved Plan. (1) After initial approval of a CMRS carrier's plan by the board, if the carrier wishes to implement service to an additional area in the state using the existing approved plan, the carrier:

(a) Shall send a letter to the board, by certified mail, return receipt requested, proposing the carrier's intention to use an approved plan for the implementation of additional service;

(b) Shall include with the letter to the board a map of the area to be served by the planned additional implementation.

(c) Need not make an additional presentation to the committee if the board agrees that the carrier's intention fits within the existing approved plan.

(2) The board shall:

(a) Decide within ninety (90) days of its receipt of the carrier's letter if it agrees that the carrier's intention to use an approved plan is appropriate for the additional service implementation; and

(b) Within ten (10) business days of its decision notify the carrier, in writing, by certified mail, return receipt requested; and

(c) Accept the cost recovery outlined in the approved plan as sufficient to submit a claim for reimbursement.

(3) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the board shall:

(a) Within ten (10) business days of its decision notify the carrier, in writing, by certified mail, return receipt requested, identifying its specific concerns; and

(b) Schedule the earliest possible date to meet with the carrier and discuss the identified concerns.

(4) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the carrier may appeal the board's decision in accordance with **KRS Chapter 13B [202-KAR-6:040]**.

Section 7. Revision of an Approved Plan. (1) In addition to the process established in Section 6 of this administrative regulation, after a cost recovery plan is approved, a subsequent change may be requested by either the CMRS carrier or the board.

(2) The board may review an existing plan requesting re-substantiation, new documentation and reapproval of an existing cost recovery plan or may revoke approval of a plan as necessary to maintain the integrity of:

(a) The wireless E9-1-1 system as new technologies are deployed; and

(b) The CMRS fund.

(3) A carrier may submit a revised plan or a change in reimbursement rate as business needs and new technologies dictate.

(4) The party requesting revision of a plan shall send written notice of the requested changes to the other party by certified mail, return receipt requested.

(5) An existing approved plan shall remain in effect until a review and decision regarding a requested change is made.

(6) Except as stated in subsection (7) of this section, if the board revokes approval of a plan, reimbursements from the CMRS fund shall cease immediately, except for RCs and NRCs for which the carrier is obligated by a previously signed contract.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(7) Failure of a carrier to respond in writing to a board request within the time frame indicated in the request, may be considered cause for the board to revoke approval of a previously approved plan and to cease reimbursement payments to the carrier.

Section 8. Appropriate Costs for Recovery. (1) For the purpose of differentiating between CMRS carrier costs and PSAP costs, the point of demarcation shall be the selective router of the contracted wireline E9-1-1 service provider, or similarly placed functional equipment within the E9-1-1 call completion hierarchy. The board shall determine, based upon industry standards, what equipment is to be considered "similarly placed functional equipment".

(2) Recoverable RCs and NRCs shall include:

- (a) Trunking;
- (b) Connection fees between carrier switches or other interface equipment to a selective router;
- (c) Facilities: T-1's, selective router ports;
- (d) Routing charges;
- (e) Operations;
- (f) Engineering;
- (g) Switch upgrades;
- (h) Network design;
- (i) Test plan development;
- (j) P-ANI administration;
- (k) Database management;
- (l) Reporting requirements;
- (m) Software required for the operation of wireless E-911;
- (n) Call counting;
- (o) Amortization and carrying costs; and
- (p) Other costs. The CMRS carrier shall provide full rationale for other costs submitted.

Section 9. Use of Reimbursed Funds. A CMRS carrier shall use money received from the CMRS fund only for those expenditures and purposes authorized in KRS 65.7631(3), listed in invoices accepted by the board and as previously authorized in an approved cost recovery plan.

Section 10. Claims for Reimbursement. (1) After a cost recovery plan is approved, a CMRS carrier may file a claim for reimbursement of NRCs and RCs defined in the plan by submitting an invoice or other documentation, as defined in the plan.

(2) An invoice submitted by a CMRS carrier which is consistent with the then-current approved plan shall be paid by the board.

(3) A carrier may appeal a rejected invoice [to arbitration] in accordance with **KRS Chapter 13B** [202 KAR 6:040].

(4) The board shall suspend payment of a claim, including a claim previously approved but unpaid by the board, from a carrier who fails to comply with the requirements for remittance as specified by KRS 65.7635, until the carrier complies.

Section 11. Amount of Reimbursement. (1) The amount of monthly payments by the board to a carrier shall be determined by one (1) of the following methods, as set out in the approved cost recovery plan:

(a) By submission of NRCs necessary for the realization of the carrier's approved plan and actually incurred by the carrier;

(b) By submission of the predefined calendar period's nonsubscriber-based RCs;

(c) By submission of the predefined calendar period's subscriber-based RCs; or

(d) By a combination of methods in[.] paragraphs (a), (b), and (c) of this subsection, as previously approved by the board.

(2) To document costs requested to be reimbursed, a carrier shall submit:

(a) A sworn paid invoice for actual costs or purchases from other vendors or suppliers; and approved documentation for internal costs (e.g., time slips for actual work performed by the carrier's employees) sufficient to establish the internal costs as reasonable and necessary; or

(b) other appropriate documentation approved by the board as part of the cost recovery plan.

(3) The subscriber count reported monthly by a carrier with the

CMRS fund remittance and reporting process shall be used to determine the total for subscriber-based RCs. The subscriber count shall be subject to audit by the board, in accordance with KRS 65.7629(13).

Section 12. Prorated Payments. If the board determines that the total amount of invoices submitted by CMRS carriers and approved by the board exceeds the amount of revenue in the fund in a month or other payment period, the board shall pay a prorated share of the available funds to carriers who have submitted board-approved invoices for the relevant period. The priority of payment shall be as follows:

(1) The balance of approved unpaid invoices, including additional carrying charges at a rate established in the approved plan, shall be paid first; and

(2) Current invoices approved by the board shall then be paid.

Section 13. Amortization of Costs. (1) Nonrecurring costs may be amortized over a period not longer than twenty-four (24) months, until the amounts claimed for NRCs are fully recouped by the CMRS carrier.

(2) The board may reject a cost recovery plan or revised cost recovery plan if the amortization period of NRCs selected by the carrier is not long enough to ensure adequate monthly surcharge revenues with which to meet the carrier's monthly reimbursement demands.

(3) The interest rate for carrying unreimbursed NRCs shall be established and fully documented in the carrier's cost recovery plan.

(4) The actual cost of borrowing to fund NRCs shall be a legitimate recoverable RC.

(5) Only NRCs shall be amortized.

Section 14. Incorporation by Reference. (1) "Kentucky CMRS Carrier Data Sheet" (04/04/2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

**FINANCE AND ADMINISTRATION CABINET
Commercial Mobile Radio Service Emergency
Telecommunications Board of Kentucky
(As Amended at ARRS, June 13, 2000 and
As Amended at Interim Special Subcommittee
On Energy, December 7, 2000)**

202 KAR 6:030. Confidential and proprietary information.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1), 65.7639

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. In order to comply with KRS 65.7629, 65.7639, and administrative regulations promulgated by the CMRS Board, it is necessary that the board and PSAPs certified by the board obtain information deemed proprietary by the CMRS carriers or LECs. KRS 65.7639 protects such information and governs the form and manner of its release to others. This administrative regulation establishes the procedures by which the board will insure the security of information deemed confidential or proprietary.

Section 1. Identification of Confidential or Proprietary Information.

(1) Information identifying subscribers shall be held confidential, as proprietary information belonging to the disclosing CMRS provider, by the board and each of its employees. Identifying information shall include a subscriber's:

(a) Name;

- (b) Telephone number;
- (c) Billing address; and
- (d) Other data specified in KRS 65.7639.

(2) A CMRS carrier, PSAP, or LEC shall explicitly and clearly mark as confidential, prior to submission, [any] information supplied and regarded by the carrier, PSAP, or LEC as proprietary.

(3) The board shall not regard as confidential or proprietary the identification of a carrier or LEC or a subsidiary of either.

Section 2. Allowable Uses of Confidential and Proprietary Information. The use of confidential or proprietary information shall be [is] strictly limited to:

- (1) Disburse funds as provided in KRS 65.7631(1), (2), and (3);
- (2) Discharge the duties of the board and its agents as provided in KRS 65.7629(1), (3), (8), (12), and (13)(a);
- (3) ~~Institute collection actions if necessary to enforce the collection of the CMRS service charge against a CMRS customer;~~
- (4) Process revenues remitted to the board by CMRS carriers; and
- (4) [(5)] Manage calls by PSAPs in accordance with KRS 65.7639.

Section 3. Management of Confidential and Proprietary Information in the Possession of the Board. (1) The board shall instruct, in writing, all board personnel, agents of the board, and PSAPs as to the proper management and uses of confidential and proprietary information.

(2) A nondisclosure agreement shall be signed by each board member, employee, and agent of the board who may handle or possess information deemed confidential or proprietary.

(3) Material deemed confidential or proprietary shall be specifically and clearly identified by the board.

(4) Only persons specifically authorized by the board shall open board correspondence. Correspondence received by postal mail, electronic mail, or facsimile and opened by an unauthorized person shall [be]:

- (a) Not be copied;
- (b) Be immediately returned to its container; and
- (c) Immediately forwarded to the board.

(5) Proprietary and confidential information in the possession of the board, a member, agent, or any other person or entity shall be stored in a secure room, vault, or container. The room, vault, or container shall be kept locked when unattended or outside of normal business hours. Electronic files containing confidential or proprietary information shall be secured utilizing established mainframe protocols, stand alone servers, secured sockets, or password protected desktop applications, as appropriate.

(6) Access to confidential and proprietary information shall be limited to persons specifically authorized by KRS 65.7639; ~~the board or as may be necessary to discharge the requirements of KRS 65.7621 to 65.7643.~~

(7) Each copy of confidential or proprietary information may be distributed as necessary for the efficient discharge of board duties and responsibilities.

(a) Copies shall be explicitly and clearly marked as confidential.

(b) A person possessing copies of documents containing confidential or proprietary information shall be responsible for document security.

(c) A copy no longer required shall be;

- 1. Returned to the board immediately; or
- 2. Destroyed immediately in such a manner as to prevent its reconstruction.

(8) An original record or file no longer needed for processing shall be:

(a) Sealed securely, retaining the notice of confidentiality, and transferred:

- 1. To a facility accessible only to the board administrator; or
- 2. With board approval, to the state archival and record storage center;

(b) With board approval, destroyed; or

(c) Returned to the proprietor.

Section 4. Breaches of Security. (1) The board shall take immedi-

ate action to determine the cause, impact, and persons involved in a security violation of the confidential information entrusted to the board.

(2) Unauthorized access to confidential or proprietary information shall be promptly reported to the board in writing.

(3) A report of a security breach shall include a description of the incident, specific identification of the information disclosed, identification of each person who accessed the records, and the purposes for which access was obtained.

(4) The board shall notify an affected party immediately, providing a copy of the written report detailing the incident.

(5) Willful or negligent disregard of the provisions of this administrative regulation by:

(a) A board member, agent, or employee shall be deemed cause for dismissal or request for resignation, as appropriate to the violator's position.

(b) A PSAP or its employee shall be deemed cause for the board to decertify the involved PSAP.

(6) A board member, agent, or employee who has been dismissed or asked to resign for willful or negligent disregard of the provisions of this administrative regulation may appeal the dismissal in accordance with KRS Chapter 13B.

(7) A PSAP that has been decertified for willful or negligent disregard of the provisions of this administrative regulation may appeal the decertification in accordance with KRS Chapter 13B.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

**FINANCE AND ADMINISTRATION CABINET
Commercial Mobile Radio Service Emergency
Telecommunications Board of Kentucky
(As Amended at ARRS, June 13, 2000 and
As Amended at Interim Special Subcommittee
On Energy, December 7, 2000)**

202 KAR 6:050. PSAP certification.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 42 USC Section 12101, 47 USC Sections 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7631(4)(a), 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(4)(a) states that no PSAP shall be eligible to request or receive a disbursement from the CMRS fund unless and until the PSAP is expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board. KRS 65.7633 requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation establishes the process by which a PSAP shall establish and maintain eligibility for disbursement from the CMRS fund.

Section 1. Phase I Certification. (1) Certification of a PSAP by the board implies that the board has examined the operation and infrastructure of the requesting PSAP and determined that it is or will be capable of complying with the requirements for handling wireless E9-1-1 calls.

(2) The board shall certify as many PSAPs as possible, recognizing the less stringent technological and operational requirements of Phase I wireless E9-1-1 and the uneven nature of existing E9-1-1 infrastructure in the Commonwealth.

(3) The board shall:

(a) Allow for as much diversity as possible in facilities and operation of E9-1-1 systems across the Commonwealth;

(b) Provide for increasing integrity in E9-1-1 systems statewide; and

(c) Coordinate and assist in the implementation of new technology in the operation of emergency telecommunications in the state.

(4) A PSAP seeking certification shall send to the board, by certified mail, return receipt requested, the following:

(a) A completed "CMRS PSAP Certification Application";

(b) A copy of:

1. Documentation which establishes the PSAPs authority to establish 9-1-1 service in accordance with KRS 65.760;

2. Any existing or proposed agreement between a CMRS carrier and the PSAP;

3. A list of the public safety agencies served by the requesting PSAP and a copy of any agreement between the PSAP and the designated agencies;

4. Any agreement between the requesting PSAP and the contracted wireline E9-1-1 service provider; and

5. A map detailing the area served by the requesting PSAP.

(c) A description of:

1. The mapping and addressing applications including:

a. The location of each database;

b. How each database is maintained; and

c. Who maintains each database.

2. The network and its characteristics currently or proposed to be in use by the PSAP;

3. The customer premises equipment employed by the PSAP in receiving E9-1-1 calls; and

4. Call transfer functions in the PSAP.

(d) Documentation of:

1. Sworn statements that telecommunications and PSAP management have signed nondisclosure agreements regarding confidential information accessible by them;

2. The disaster recovery application used by the PSAP including:

a. Default routing and alternate routing of call applications or other contingency applications for rerouting calls in the event of system failure;

b. Type of backup power equipment installed; and

c. Evacuation and relocation applications.

3. Seven (7) digit service for administrative nonemergency service;

4. Telecommunications devices for the deaf in the PSAP;

5. A certificate or sworn statement that telecommunications employed by the PSAP that handles [who handle] wireless E9-1-1 calls meet the training requirements as required by law; and

6. The PSAP's standard operating procedures for the handling of wireless E9-1-1.

(e) A description of:

1. The PSAP's ability or anticipated ability to handle the data elements associated with wireless E9-1-1 calls; and

2. The anticipated use of the CMRS funds, in accordance with KRS 65.7631.

(5) [(6)] Nothing in subsection (4)(b)1 of this section shall prohibit the Kentucky State Police from establishing a public safety answering point as otherwise permitted by law.

(6) [(7)] After its initial review, the board shall:

(a) Require submission of other necessary documentation; and

(b) Schedule an on-site inspection by a member or members of the board.

Section 2. Application for Certification. (1) An application for certification shall be stamped "Confidential". Proprietary information received by the board shall be filed and maintained so as to maintain its confidentiality in accordance with KRS 65.7639 and 202 KAR 6:030.

(2) **The board shall review and act upon an application for certification within ninety (90) days of receipt. Board action on the application shall be determined by a simple majority vote. [An application for certification shall be approved by the board by a simple majority vote.]**

(3) Within ten (10) business days of its decision, written notice of the board's approval or disapproval of an application shall be sent to the PSAP, certified mail, return receipt requested.

(4) ~~[The board shall review a plan within ninety (90) days of its receipt by the board.]~~

(5) If an application for PSAP certification is disapproved:

(a) The board shall:

1. State in its written notice of decision the specific reason for rejection; and

2. Schedule a meeting with the PSAP applicant to resolve identified problems.

(b) The PSAP may:

1. Submit a revised application to the board for its review and

approval or disapproval, following the procedure set out in Sections 1 and 2 of this administrative regulation; or

2. Appeal the board's rejection **in accordance with KRS Chapter 13B.** ~~[to an arbitrator]~~ ~~[as described in 202 KAR 6:040.]~~

Section 3. Revision of an Approved Application. (1) After an application is approved, subsequent changes may be requested by either the PSAP or the board.

(2) The board may review an existing certification and request resubstantiation and reapproval of an application if necessary:

(a) To maintain the integrity of the wireless E9-1-1 system;

(b) To implement Phase II as specified by the FCC;

(c) In the event the board becomes aware of changes or deficiencies that have occurred at a PSAP.

(3) New or revised requirements specified by the board shall be applied to all PSAPs, upon written notice, within a reasonable period, not to exceed ninety (90) days.

(4) A party requesting revision of an application shall send written notice of the requested changes to the other party by certified mail, return receipt requested.

(5) An existing and approved application shall remain in effect until the board has notified the PSAP of its decision on the proposed changes.

(6) The board shall review a request for revision under the procedure designated in Sections 1 and 2 of this administrative regulation.

(7) The board shall decertify a previously approved application and shall discontinue payments to a PSAP, if the PSAP fails, without good cause, to respond in writing to a board request within the time period specified in the request.

Section 4. Phase II Certification. (1) The board shall establish and publish a timetable within which it expects PSAPs to migrate to Phase II in accordance with KRS 65.7625(3)(c) [65.7625(3)(e)].

(2) If the evolving technology necessary to implement Phase II requires additional enhancements to a PSAP's operation, the board shall:

(a) Seek additional documentation and substantiation of a PSAP's continuing ability to handle E9-1-1 calls; or

(b) Impose more stringent requirements to receive or maintain certification.

Section 5. Decertification of a PSAP. The board shall decertify a PSAP if the PSAP:

(1) Has used funds for purposes other than as prescribed by KRS 65.7631 and administrative regulations promulgated pursuant thereto; or

(2) Has not maintained or purchased the necessary technology or infrastructure to comply with evolving requirements.

(3) A PSAP that has been decertified may appeal the decertification in accordance with KRS Chapter 13B.

Section 6. Incorporation by Reference. (1) "CMRS PSAP Certification Application" (12/02/1999) is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the CMRS Board, 100 Fair Oaks Lane, Suite 102A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 200 at noon

**FINANCE AND ADMINISTRATION CABINET
Commercial Mobile Radio Service Emergency
Telecommunications Board of Kentucky
(As Amended at ARRS, June 13, 2000 and
As Amended at Interim Special Subcommittee
On Energy, December 7, 2000)**

202 KAR 6:060. PSAP pro rata fund disbursement.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC Sections 1 to 16, 47 USC Sections 153(27), 332(d)

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the CMRS Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements. This administrative regulation establishes the pro rata fund disbursement process.

Section 1. Initial Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board for pro rata distribution prior to April 1, 2000 shall be frozen in order to provide sufficient opportunity for PSAPs to certify for disbursement of CMRS funds.

(2) On or before June 30, 2000, the CMRS Board shall establish a date before which a PSAP wishing to receive a pro rata portion of the funds shall have been certified by the board. Not less than ninety (90) days prior to the established date, notice of the date shall be:

- (a) Posted on the CMRS Board's web site; and
- (b) Distributed in writing to:
 1. All PSAPs known to the board;
 2. County judge executives;
 3. Mayors of class six (6) cities or above; and
 4. Mayors of urban county governments.

(3) Each PSAP certified by the board by the established date shall receive, within forty-five (45) days of the established date, a pro rata disbursement from the frozen funds in accordance with the "PSAP pro rata formula" in KRS 65.7631(2)(a).

Section 2. Ongoing Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board after March 31, 2000 shall be disbursed to PSAPs in quarterly payments.

(2) Each PSAP certified by ~~December~~ [July] 31, 2000 shall be eligible for the first and second quarterly payment [initial disbursement] of funds which shall be those funds collected during the second and third calendar quarter of the year 2000.

(3) Following the first and second quarterly payment described in subsection (2) of this section, any PSAP which is certified by the end of a calendar quarter shall be eligible to receive a pro rata share of funds collected during that quarter. Payments will be made within forty-five (45) days of the end of each calendar quarter. [Following the first quarterly payment [initial disbursement], funds disbursed under the "PSAP pro rata formula" shall be disbursed to each PSAP that is certified at the end of the calendar quarter prior to the disbursement date, in accordance with the formula specified in KRS 65.7631(2)(a).

(4) Quarterly payments for "PSAP pro rata formula" disbursements shall be made on or before the midpoint of the calendar quarter following the quarter on which they are based.]

DAVID LUCAS, Chairman

ANGELA C. ROBINSON, Assistant Attorney General

APPROVED BY AGENCY: April 13, 2000

FILED WITH LRC: April 14, 2000 at noon

DEPARTMENT OF AGRICULTURE
Division of Markets
(As Amended at ARRS, December 12, 2000)

302 KAR 45:010. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660, 246.990(9), 50 CFR Part 23.51

STATUTORY AUTHORITY: KRS [Chapter 13A,] 246.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.660 requires [authorized] the Department of Agriculture to promulgate [adopt rules and] administrative regulations relating to the administration of a program for Wild American Ginseng. This administrative regulation establishes [sets forth] general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. **Definitions.** (1) "Ginseng dealer" means a [any] person engaged in the business of buying ginseng roots from ginseng

collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in a [any] form in interstate commerce.

(2) "Commissioner" is defined at KRS 246.010(2). [means—the Commissioner of Agriculture.]

(3) "Department" is defined at KRS 246.010(2). [unless otherwise specified means the Kentucky Department of Agriculture.]

(4) "State" means the Commonwealth of Kentucky.

Section 2. Registration. (1) A person shall complete a "Kentucky Ginseng Dealer Application" and return it to the Department prior to June 30th of each year.

(2) An applicant for renewal of a certificate of registration shall meet the department's recordkeeping and reporting requirements.

(3) Certificates of registration shall be issued for a period of one (1) year and shall expire on the 30th day of April of each year. [No person shall be a ginseng dealer without first obtaining a certificate of registration issued by the department. No registration shall be renewed until the ginseng dealer has met all requirements of recordkeeping and reporting as required by the department.

(2) Certificates of registration will be issued for a period of one (1) year, and will expire on the 30th day of April each year.

(3) Completed applications for certification of registration, issued by the department, must be returned prior to June 30th of each year.]

Section 3. Recordkeeping. (1)(a) Purchase and sale of ginseng. Ginseng dealers shall keep records on forms furnished by the department of purchases and sales of ginseng. The records shall include:

1. Month purchased;
2. Month dug;
3. County where dug;
4. Weight of purchase; and
5. Signature and address of digger or seller.

(b) Records of sales between dealers. Ginseng dealers shall keep records of purchases from other dealers. Records of sales between dealers shall include:

1. The month of purchase from a dealer;
2. The weight of the ginseng purchase; and
3. The signature and registration number of the dealer from whom the purchase is made.

(c) All purchase records shall be submitted to the department on a monthly basis.

(d) No ginseng shall be certified until the purchase records are recorded by the department. [All ginseng dealers shall keep records, on forms furnished by the department, of all purchases and sales of ginseng. These records will include month purchased, month dug, county where dug, weight of purchase, and signature and address of digger or seller. Ginseng dealers shall also keep records of purchases from other dealers. These records shall include the month each purchase from a dealer is made, the weight of purchase, and the signature and registration number of the dealer from whom the purchase is made. All purchase records shall be submitted to the department on a monthly basis. No ginseng shall be certified until the purchase records are recorded by the department.]

(2) Retention. A person [All persons] required to maintain records under this section shall retain the records for a period of three (3) years.

(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. A ginseng dealer shall [All ginseng dealers will] file an annual report with the department by April 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. Reporting Ginseng Originating Outside of Kentucky. A ginseng dealer shall [All ginseng dealers will] file a report with the department at least every calendar-year quarter if the dealer has any commerce in ginseng originating from any state other than Kentucky. The report shall [must] be sent within fifteen (15) days of the end of any calendar-year quarter and shall list each purchase and

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

sale of out-of-state ginseng made by the dealer during that quarter.

Section 6. Harvest Season. Beginning September 1, 1988 and each year thereafter, wild ginseng shall [will] only be dug between August 15th and December 1st of each year. [Any] Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger. Ginseng growers will not longer be able to harvest the ginseng until it is five (5) years old or has three (3) prongs.

Section 7. **Certification for Sale.** [All] Sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning September 1st of each year and extending until March 31st of the following year.

Section 8. **Unsold Ginseng.** [All] Ginseng unsold by March 31st of the year after harvest shall [must] be weighed by the department and the dealer given a weight receipt. A [Any] future export certification of this stock shall [will] only be issued against the weight receipt.

Section 9. **Exportation of Ginseng.** (1) [All] Ginseng dealers holding a certificate of registration shall [hereunder-must] obtain a certificate of legal taking issued by the department after inspection by an official of the department identifying the origin, year of taking, and weight of a [any] shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. [Such] Certification shall be issued to the dealer on triplicate forms issued by the department. A copy of [such] certification shall [must] be enclosed with the shipment subject of the certification. A copy of a [such] certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department [and submitted in accordance with internal procedures of the department].

(2) At the time of issuance of the certificate, the department official shall receive from the ginseng dealer copies of all purchase records covering the amount of ginseng certified. Records of ginseng purchased from other dealers shall be recorded with the department prior to a certificate being issued.

Section 10. [No] Ginseng dug outside the borders of Kentucky and not certified [which is uncertified] in its state of origin shall not be allowed to enter Kentucky.

Section 11. (1) **Protection of Species, Violation of Law.** [Any] Ginseng which is obtained in contravention of laws for the protection of the species or in violation of any other law shall not be purchased, sold, shipped, or transported within the Commonwealth of Kentucky.

(2) The Kentucky Department of Agriculture may enforce the provisions of Section 11 of this administrative regulation herein as provided in KRS 260.030.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2000-20001 Kentucky Ginseng Dealer Application" (2000-2001 edition);

(b) "American Ginseng Export Certificate" (December 2000);

(c) Dealer Transaction Log - Sales (December 2000);

(d) Ginseng Dealer Purchase Record (December 2000); and

(e) Wild Ginseng Purchase Record (December 2000).

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Value-Added Foods, 100 Fair Oaks, Suite 252, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: September 6, 2000

FILED WITH LRC: September 6, 2000 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, December 12, 2000)

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation that have federal definitions have been clarified and simplified, but are not more stringent or otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid Rain Program" means the national program for reducing SO₂ and NO_x emissions established under 42 USC 7651 to 7651o (Title IV of the Act) and codified [promulgated] at 40 CFR Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 USC 7401 to 7671q[~~as amended by PL 101-549 (November 15, 1990) and PL 102-187 (December 4, 1991).~~].

(3) "Actual emissions" means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.

(4) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected states" means states that:

(a) Border Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or

(b) Are situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined in KRS 224.01-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined in KRS 224.01-010(3).

(11) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(12) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference or equivalent method, but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.

(13) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(14) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(17) "Cabinet" is defined in KRS 224.01-010.

(18) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility that:

(a) Exceeds the product of:

1. The applicable "annual asset guidelines repair allowance per-

centage" specified in the Internal Revenue Service (IRS) Publication 534; and

2. The affected facility's basis, as defined by 26 USC 1012; and

(b) Is not reduced by an excluded addition as defined in IRS Publication 534.

(19) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(20) "[Conditional major permit" means a permit issued pursuant to 401 KAR 52:030 that limits the potential to emit (PTE) of a source below the major source thresholds for a Title V permit.

(21) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(21) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(22) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(23) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(24) "Designated representative" means a person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA in accordance with 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. In matters relating to the acid rain portion of a Title V permit, the term "responsible official" means the designated representative.

(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.

(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.

(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source which:

(a) Requires immediate corrective action to restore normal operation;

(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency; and

(c) Shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(28) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.

(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.

(30) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.

(31) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.

(32) "Equivalent method" means a method of sampling and ana-

lyzing for an air pollutant, which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(33) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

[(35) "Existing source" means a source that is not a new source.

(36) "Federally enforceable permit" means a permit that is submitted for public, affected state if applicable, and U.S. EPA review pursuant to 401 KAR 52:100.]

(34) "Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a source subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 USC 7412;

(e) Standards or requirements of the Acid Rain Program;

(f) Requirements established pursuant to 42 USC 7661c(b) or 7414(a)(3) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 to 7492 for temporary sources permitted pursuant to 42 USC 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e);

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made.

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52:040, and for which a final determination has been made.

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 USC 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(44) "KyEIS" means the Kentucky Emissions Inventory System.

(45) "Major source" means a stationary source or a group of stationary sources that emits or has the potential to emit at or above a major source threshold and:

(a) For HAPs:

1. Is located within a contiguous area;

2. Is under common control;
 3. Includes all fugitive HAP emissions in determining if the source is major; and
 4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:
 - a. Oil or gas exploration or production wells and the associated equipment; or
 - b. Pipeline compressors or pump stations; and
 - (b) For regulated air pollutants other than HAPs:
 1. Is located on one (1) or more contiguous or adjacent properties;
 2. Is under common control;
 3. Belongs to a single major industrial grouping where:
 - a.] all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual, ~~except that research and development activities shall be treated as belonging to a separate industrial grouping; or~~
 - b. The source is a support facility; and
 4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:
 - a. Coal cleaning plants (with thermal dryers);
 - b. Kraft [Kaff] pulp mills;
 - c. Portland cement plants;
 - d. Primary zinc smelters;
 - e. Iron and steel mills;
 - f. Primary aluminum ore reduction plants;
 - g. Primary copper smelters;
 - h. Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - i. Hydrofluoric, sulfuric, or nitric acid plants;
 - j. Petroleum refineries;
 - k. Lime plants;
 - l. Phosphate rock processing plants;
 - m. Coke oven batteries;
 - n. Sulfur recovery plants;
 - o. Carbon black plants (furnace process);
 - p. Primary lead smelters;
 - q. Fuel conversion plants;
 - r. Sintering plants;
 - s. Secondary metal production plants;
 - t. Chemical process plants;
 - u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
 - v. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
 - w. Taconite ore processing plants;
 - x. Glass fiber processing plants;
 - y. Charcoal production plants;
 - z. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
 - aa. All other stationary source categories subject to a standard promulgated pursuant to 42 USC 7411 or 42 USC 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 USC 7602(j).
- (46) "Major source threshold" means PTE:
- (a) For HAPs:
 1. Ten (10) tons per year or more of a single HAP;
 2. Twenty-five (25) tons per year or more of combined HAPs; or
 3. A lesser quantity that the U.S. EPA establishes in a final rule-making; or
 - (b) 100 tons per year or more for regulated air pollutants other than HAPs, except that:
 1. For ozone nonattainment areas:
 - a. 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as marginal or moderate;
 - b. Fifty (50) tons per year or more in areas classified as serious;
 - c. Twenty-five (25) tons per year or more in areas classified as severe; or
 - d. Ten (10) tons per year or more in areas classified as extreme;
 2. Fifty (50) tons per year or more of carbon monoxide for carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide

levels; or

3. Seventy (70) tons per year or more of particulate matter (PM₁₀) for PM₁₀ nonattainment areas classified as serious.

(47) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(48) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(49) "Minor source" means a stationary source that emits and has the potential to emit less than the major source thresholds.

(50) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(51) "Modification" means a physical change in, or a change in the method of operation of, an affected facility that:

- (a) Increases the amount of a regulated air pollutant emitted into the atmosphere by that facility or which results in the emission of a regulated air pollutant into the atmosphere not previously emitted; and
- (b) Is not solely:
 1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category;
 2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;
 3. An increase in the hours of operation;
 4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.

5. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8);

6. The addition or use of a system or device whose primary function is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system, which the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source [an existing facility].

(52) "Modification under Title I of the Act" means a change at a facility that would constitute a modification under 42 USC 7470 to 7492 or 42 USC 7501 to 7515.

(55) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the effective date of this administrative regulation irrespective of a change in emission rate.]

(53) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(54) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(55) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design[;] where:

- (a) A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation is enforceable as a practical matter; and
- (b) This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for forty-five

(45) day review period.

(58) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct [life of] a comparable entirely new affected facility; and

(b) ~~[The estimated life of the affected facility after the replacement exceeds fifty (50) percent of the life of a comparable entirely new affected facility;~~

(c) ~~The components being replaced cause or contribute to the emissions from the affected facility; and~~

(d) It is technologically and economically feasible to meet the applicable requirements in 401 KAR Chapters 50 to 65.

(59) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by 40 CFR Part 50, Appendices A to N [K]; Part 60, Appendices A to B; and Part 62, Appendix B.

(60) "Regulated air pollutant" means:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 to 7671q (Title VI of the Act);

(e) A pollutant~~[-other than total suspended particulates (TSP);]~~ subject to a standard promulgated pursuant to 42 USC 7411;

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 USC 7412 [that is:

1. Promulgated by the U.S. EPA pursuant to 42 USC 7412(d);

2. Adopted by the cabinet pursuant to 42 USC 7412(g) and (j); and which shall be considered regulated for all sources or categories of sources upon the earlier date of:

a. Promulgation of the standard or requirement; or

b. Eighteen (18) months after the standard or requirement was scheduled to be promulgated pursuant to 42 USC 7412(e)(3); or

3. A HAP for which the cabinet has made a case-by-case emission limitation determination pursuant to 42 USC 7412(g)(2), and which shall be considered regulated only for the source for which the determination was made].

(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(62) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

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

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., a regional administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

[(66) "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification but do not come from the source or modification itself;

(b) Are specific, well-defined, and quantifiable and impact the same general area as the source or modification which causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not

otherwise be constructed or increase its emissions as a result of the construction or operation of the source or modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, train, or vessel;]

(63) "Section 502(b)(10) changes" means changes that contravene an express permit term and does not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(64) "Shutdown" means the cessation of an operation.

(65) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65, including the emission control requirements necessary to comply with 401 KAR Chapter 51.

(67) "Start-up" means the setting in operation of an affected facility.

(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 USC 7410, which has been approved by the U.S. EPA.

(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.

(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.

(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.

[(76) "Support facility" means stationary source or group of stationary sources that support another source and shall be considered part of the same source regardless of the two (2) digit SIC code for the facility if:

(a) Both are under common control of the same person (or persons under common control);

(b) Both are located on contiguous or adjacent properties; and

(c) At least fifty (50) percent of the source's output is dedicated to the source it supports.

(77) "Synthetic minor permit" means a permit issued pursuant to 401 KAR 52:030 which limits the potential to emit of the source or an affected facility at the source below the major source or major modification thresholds that trigger review pursuant to 401 KAR 51:017 or 401 KAR 51:052.]

(72) "Title V permit" means a permit issued pursuant to 401 KAR 52:020 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.

(73) "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 USC 7661 to 7661f (Title V of the Act).

(74) "Total suspended particulate" or "TSP" means particulate matter as measured by the method described in Appendix B of 40 CFR 50.

(75) "tpy" means ton per year.

(76) "U.S. EPA" means the U.S. Environmental Protection Agency.

(77) "Volatile organic compound" or "VOC" means an organic compound that participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic,

branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HCFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC 123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate; and perfluorocarbon compounds which fall into the following classes:

- (a) Cyclic, branched, or linear, completely fluorinated alkanes;
- (b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (c) Cyclic, branched, or linear, completely fluorinated tertiary amines with now unsaturations;
- (d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine; or
- (e) Other compounds that have negligible photochemical reactivity and which are inadvertently measured by test methods that have been approved by the cabinet and the U.S. EPA.

(78) "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 12, 2000)**

401 KAR 52:020. Title V permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 70, 42 USC 7661 to 7661(f)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 70, 42 USC 7661 to 7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to **promulgate** [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for air contaminant sources located in Kentucky that are required to obtain a Title V permit.

Section 1. Applicability. This administrative regulation shall apply to sources required to obtain a Title V permit, including:

- (1) Major sources;
- (2) Affected sources subject to the Acid Rain Program;
- (3) Sources subject to new source review under 401 KAR 51:017 or 401 KAR 51:052; and
- (4) Sources that are:
 - (a) Subject to a federal standard promulgated under 42 USC 7411 (NSPS) or 42 USC 7412 (NESHAP); and
 - (b) Not exempted or deferred from Title V permitting by the U.S. EPA.

Section 2. Exemptions. The following sources shall be exempt from this administrative regulation, except that an exempted source

may voluntarily apply for a Title V permit:

(1) Sources required to obtain a permit solely because they are subject to 40 CFR 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters; and

(2) Sources required to obtain a permit solely because they are subject to the requirements contained in 401 KAR 58:025, Asbestos standards. [(1) The following sources shall be exempt from this administrative regulation:

- (a) Sources required to be registered under 401 KAR 52:070;
- (b) Except as provided in Section 1(4) of this administrative regulation:

- 1. Sources permitted under 401 KAR 52:030; and
- 2. Minor sources required to be permitted under 401 KAR 52:040; and

(c) Sources subject only to the requirements of 40 CFR 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters:

(2) The following activities shall be exempt from this administrative regulation:

- (a) Vehicles used for the transport of passengers or freight;
- (b) Publicly-owned roads;
- (c) Asbestos demolition or renovation operations subject only to an applicable requirement in 401 KAR Chapter 58;
- (d) Open burning covered under 401 KAR 63:005; and
- (e) Activities or emission units contained in the "List of Trivial Activities", which the cabinet shall maintain and make available:

1. On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382; Email:

NREPC.DEPAirPermits@mail.state.ky.us; or fax (502) 573-3787; and

2. On the internet at:

www.nr.state.ky.us/nrepc/dep/daq/prb/trivial.html;

Section 3. General Provisions. (1) Sources subject to this administrative regulation shall:

(a) Not construct, reconstruct, or modify without a permit or permit revision issued under this administrative regulation, except as provided in Sections 13, 14, 15, [and] 17, and 18 of this administrative regulation;

(b) Operate in compliance with a permit issued under this administrative regulation;

(c) Demonstrate compliance with applicable requirements if requested by the cabinet;

(d) Comply with 401 KAR 50:038, Emission fees;

(e) Submit an annual compliance certification pursuant to Section 21 of this administrative regulation;

(f) Submit an annual emission certification pursuant to Section 22;

(g) Apply for a permit renewal pursuant to Section 12 of this administrative regulation; and

(h) 1. Allow authorized representatives of the cabinet to enter upon the premises where a source is located or emissions-related activity is conducted, or records are kept, at reasonable times:

- a. To access and copy any records required by the permit;
- b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and
- c. To sample or monitor substances or parameters to determine compliance with the permit and all applicable requirements.

2. Reasonable times shall be:

- a. During all hours of operation;
 - b. During normal office hours; or
 - c. During an emergency.
- (2) For permits issued to construct, reconstruct, or modify:
- (a) The permit shall become invalid if the permitted action:
 - 1. Is not commenced within eighteen (18) months after the permit is issued;
 - 2. Begins but is discontinued for a period of eighteen (18) months or more; or
 - 3. Is not completed within eighteen (18) months of the scheduled completion date;
 - (b) For phased construction projects:

1. [.] Each phase shall commence construction within eighteen (18) months of the projected and approved commencement dates; [and]

2. The time period between construction of approved phases shall not count in determining that construction has been discontinued for eighteen (18) months or longer; and

3. [(e)] The cabinet may extend the time periods in this paragraph [subsection] if the source shows good cause.

(3) Sources that construct, reconstruct, or modify shall demonstrate compliance pursuant to 401 KAR 50:055 as follows:

(a) Constructing [New] or reconstructing sources shall demonstrate compliance with all applicable requirements;

(b) Modifying sources shall demonstrate compliance with all applicable requirements that:

1. Become applicable following the modification; or

2. May be affected as a result of the modification; and

(c) Sources that have not demonstrated compliance during the prescribed timeframe given in 401 KAR 50:055 shall operate only for purposes of demonstrating compliance unless otherwise authorized by an approved compliance plan or an order of the cabinet.

Section 4. Applying for a Permit, Permit Revision, or Permit Renewal. (1) Complete applications shall be submitted using Forms DEP7007A[1] to DD, which is incorporated by reference in 401 KAR 52:050, for the following permit actions:

(a) Initial permits for [new] sources commencing construct

(b) The first Title V permit for [existing] sources that commence construction prior to the effective date of this administrative regulation;

(c) Renewal permits; and

(d) Permit revisions, including administrative permit amendments, minor permit revisions, and significant permit revisions.

(2) A complete application shall contain the information specified in Section 5 of this administrative regulation, except that:

(a) Forms DEP7007AA, BB, and CC shall not be required for the application of a source commencing construction unless a compliance plan is required under Section 3(3)(c) of this administrative regulation [A compliance plan or schedule (Forms DEP7007AA, BB, and CC) shall not be required for applications to construct a new source];

(b) Applications for permit revisions shall provide only the information related to the change and a certification by a responsible official pursuant to Section 23 of this administrative regulation; and

(c) Applications for permit renewals shall provide only the information that is new or different from the most recent source-wide permit application and certification by a responsible official pursuant to Section 23 of this administrative regulation.

(3) Sources subject to Section 1(4) of this administrative regulation shall submit a complete application within one (1) year after the U.S. EPA publishes a final rule requiring the source to obtain a Title V permit.

(4) Sources that submit an application with a claim of confidential information shall:

(a) Authorize the cabinet to submit the information to the U.S. EPA; or

(b) Submit the information to the cabinet and directly to the U.S. EPA.

(5) Completed application forms shall be submitted to Kentucky Division for Air Quality, Attn: Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601:

(a) For initial permits, minor permit revisions, significant permit revisions, and permit renewals, the original plus two (2) copies; and

(b) For administrative permit amendments, the original only.

(6) The cabinet may request up to seven (7) additional copies of the completed application form if needed for public review.

(7) Forms DEP7007A[1] to DD may be obtained:

(a) By contacting the Kentucky Division for Air Quality, Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, Email:

NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787;

or

(b) On the Internet at:

www.state.ky.us/nrepc/dep/daq/prb/daqapp.htm.

Section 5. Information Required on Application. Applications shall contain:

(1) All the information needed to determine the applicable requirements and emission fees;

(2) The following administrative information:

(a) Company name and address and, if different, plant name and address;

(b) Owner's and agent's names and addresses;

(c) Name, address, and phone number of the plant site manager or contact;

(d) Description of the source's processes and products; and

(e) Appropriate SIC Code;

(3) The following emissions-related information:

(a) All emissions for which the source is major and all emissions of regulated air pollutants[-except those exempted in Section 2(2) of this administrative regulation];

(b) All fugitive emissions, listed in the same manner as stack emissions;

(c) Additional information if needed to verify which requirements are applicable;

(d) Identification of the applicable requirements for each emissions unit;

(e) Identification and description of all emission units and emission points in sufficient detail to establish the basis for applicable requirements and emission fees;

(f) Identification and description of air pollution control equipment and compliance monitoring devices or activities;

(g) Emission rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method [determine compliance with applicable requirements];

(h) [(g)] Fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to determine or limit emissions;

(i) [(h)] Other information required by an applicable requirement, including stack height limitations developed pursuant to 401 KAR 50:042; and

(j) [(i)] Calculations on which the information in this paragraph is based;

(4) Citation and description of all applicable requirements, and the applicable test method for determining compliance with each;

(5) An explanation of proposed exemptions to otherwise applicable requirements;

(6) Other information if needed to implement and enforce other applicable requirements or to determine their applicability;

(7) If applicable, information needed to determine the applicable requirements and emission fees, and to define the permit terms and conditions for:

(a) Each alternate operating scenario; and

(b) Emissions trading under federally-enforceable emissions caps containing proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable;

(8) A compliance plan containing:

(a) The compliance status for all applicable requirements, including:

1. For requirements with which the source is in compliance, a statement that the source will continue to comply; and

2. For requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance;

(b) A compliance schedule that [-including]:

1. Resembles or is at least as stringent as that contained in an order of the cabinet;

2. Is supplemental to, and does not condone noncompliance with, the applicable requirements upon which it is based;

3. Includes, for applicable requirements that will become effective during the permit term, a statement that the source will comply on a timely basis, unless a more detailed schedule is called for in the applicable requirement; and

4. Includes, [-] for requirements with which the source is not in compliance, remedial measures leading to compliance, including checkpoints and scheduled completion dates;

(c) For sources required to have a schedule of compliance to remedy a violation or noncompliance, a schedule for submission of certified progress reports no less frequent than every six (6) months;

(9) A certification of compliance with all applicable requirements by a responsible official pursuant to Section 23 of this administrative regulation;

(10) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting

requirements, and test methods;

(11) A schedule for submission of compliance certifications during the permit term, to be submitted annually or more frequently if specified by the cabinet or in an applicable requirement;

(12) A statement describing the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements; and

(13) Insignificant activities as specified in Section 6(1) of this administrative regulation.

Section 6. Insignificant and Trivial Activities. (1) Activities that meet the following conditions shall be classified as insignificant activities:

(a) The PTE from each activity shall not exceed:

1. One-half (1/2) tpy of combined HAPs; or [a HAP];
2. [One and one-half (1-1/2) tpy of combined HAPs; or
- 3.] Five (5) tpy of a nonhazardous regulated air pollutant;

(b) The activity shall not involve the incineration of medical waste; and

(c) The activity shall not be subject to a federally-enforceable requirement, other than generally applicable requirements.

(2) In applications for permits, permit revisions, and permit renewals, sources shall:

(a) Include descriptions for all insignificant activities;

(b) Include all applicable requirements for each insignificant activity; and

(c) Not be required to provide detailed estimates for insignificant activities.

(3) A list of insignificant activities and generally applicable requirements approved by the cabinet shall be maintained and made available on request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, Email:

NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787.

(4) The cabinet shall maintain a list of approved trivial activities, which shall not be required to be included in permit applications. The list shall be made available:

(a) On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, e-mail:

NREPC.DEPAirPermits@mail.state.ky.us,

or fax (502) 573-3787; or

(b) On the Internet at:

www.nr.state.ky.us/nrepc/dep/daq/prb/trivial.html.

Section 7. Duty to Supplement or Correct Application. (1) An applicant who fails to submit relevant facts or who has submitted incorrect information in an application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information.

(2) If new requirements become applicable to a source after the application is submitted, but before a draft permit is issued, the applicant shall promptly provide the supplemental information to the cabinet.

(3) Failure to supplement or correct an application shall be a violation of this administrative regulation and may result in:

(a) Termination of a permit;

(b) Revocation and reissuance of a permit;

(c) Revision of a permit; [;] or

(d) Denial of a permit.

Section 8. Application Shield. (1) If a [an-existing] source submits a timely and complete application for a source-wide permit or permit renewal, the source's failure to have a permit shall not be a violation of this administrative regulation unless the cabinet makes a final determination to deny the permit or permit renewal.

(2) A source's authority to operate shall cease to apply if the source fails to submit additional information requested by the cabinet, by the deadline set by the cabinet, after the completeness determination has been made.

Section 9. Completeness Review and Determination. Applications shall be reviewed by the cabinet for completeness pursuant to Section 2-1 of "Cabinet Provisions and Procedures for Issuing Title V Permits", which is incorporated by reference in Section 26 of this administrative

regulation, for:

(1) Initial permits for [new] sources commencing construction;

(2) The first Title V permit for [existing] sources that commenced construction prior to the effective date of this administrative regulation;

(3) Significant permit revisions; and

(4) Permit renewals.

Section 10. Permit Content. Permits shall contain terms and conditions as provided in Sections 1a to 1c of "Cabinet Provisions and Procedures for Issuing Title V Permits."

Section 11. Permit Shield. (1) Compliance with the conditions of a permit shall be considered in compliance with all applicable requirements as of the date of permit issuance if:

(a) The applicable requirements are included and specifically identified in the permit; or

(b) The cabinet, in acting on the permit application or revision [in reviewing the application], determines in writing that other specifically identified requirements are not applicable to the source, and this determination is stated in the permit.

(2) A permit shall not have a permit shield unless the permit expressly states that a shield exists.

(3) Nothing in the permit or permit shield shall alter or affect:

1. Emergency orders issued under 42 USC 7603, including the authority of the U.S. EPA under that section;

2. The liability of the owner or operator for violation of an applicable requirement prior to or at the time of permit issuance;

3. The applicable requirements of the Acid Rain Program; or

4. The ability of the U.S. EPA to obtain information from the source pursuant to 42 USC 7414. [A permit shield shall not protect the owner or operator from enforcement for violating an applicable requirement prior to or at the time of permit issuance.]

Section 12. Permit Duration and Renewal. (1) Title V permits issued pursuant to this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units combusting municipal waste [incinerators] shall remain in effect for twelve (12) years and shall be reviewed by the cabinet every five (5) years.

(2) Permits issued under the procedures of Section 2-III of "Cabinet Provisions and Procedures for Issuing Title V Permits" [for Title V Permits"] shall remain in effect until a Title V permit is issued to the source.

(3) A source that is subject to an existing permit, authorization to operate, or order of the cabinet, shall operate in compliance with the existing terms and conditions until a final Title V permit is issued.

(4) An application for a permit renewal shall be submitted at least six (6) months prior to expiration of the current permit.

(5) Expiration of a permit shall terminate the source's authority to operate unless the source has submitted a timely and complete renewal application.

(6) All terms and conditions of the previous permit, including the permit shield, shall remain in effect until the renewal permit has been issued or denied, if:

(a) The cabinet fails to issue or deny the renewal permit before the expiration of the previous permit; and

(b) The source has submitted a timely and complete renewal application.

(7) If the cabinet fails to act promptly on a permit renewal, the U.S. EPA may terminate or revoke and reissue the permit pursuant to 42 USC 7661d(e).

Section 13. Administrative Permit Amendments. (1) The following permit revisions may be processed as administrative permit amendments:

(a) Correct typographical errors;

(b) Change the name, address, or phone number of a person identified in the permit, or make similar minor administrative changes;

(c) Change in ownership or operational control if the cabinet determines that no other changes in the permit are necessary;

(d) Require more frequent monitoring or reporting; and

(e) [Add an insignificant activity; and

(f)] Incorporate into a Title V permit the requirements from precon-

struction review permits that:

1. Were processed using procedures equivalent to those in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision [for a similar permit revision]; and

2. Contained compliance requirements equivalent to those in this administrative regulation.

(2) Sources requesting an administrative permit amendment shall submit the appropriate Forms DEP7007A [†] to DD reflecting the desired change and may implement the change immediately upon submittal.

(3) For administrative permit amendments in which only the owner or person to whom a permit is issued changes, the following information shall be submitted to the cabinet within ten (10) days following the change:

(a) Administrative Information Form DEP7007A [†] showing the names and other information that has changed; and

(b) If ownership has changed, a signed written agreement specifying the date of transfer of permit responsibility, coverage, and liability.

(4) The cabinet may allow coverage under the permit shield for a preconstruction review permit incorporated as an administrative permit amendment, if:

(a) The preconstruction review permit meets the relevant requirements for a significant permit revision under this administrative regulation; and

(b) The cabinet notifies the U.S. EPA of the proposed action as provided in Section 2-IV.5 of "Cabinet Provisions and Procedures for Issuing Title V Permits".

(5) Administrative permit amendments for the acid rain portion of a permit shall be governed by regulations promulgated pursuant to 42 USC 7651 to 7651o.

Section 14. Minor Permit Revisions. (1) Except as provided in the Acid Rain Program the procedures in this section shall be used for permit revisions that:

(a) Do not violate an applicable requirement;

(b) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(c) Do not require or change a case-by-case determination of:

1. An emission limitation or other standard;

2. A source-specific determination for temporary sources of ambient impacts; or

3. A visibility or increment analysis;

(d) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and which the source has assumed to avoid an otherwise applicable requirement, including:

1. A federally enforceable emissions cap assumed to avoid classification as a modification under Title I of the Act; and

2. An alternative emissions limit approved pursuant to 42 USC 7412(i)(5);

(e) Is not a modification under Title I of the Act; and

(f) Is not required to be processed as a significant permit revision.

(2) The procedures in this section may be used for changes involving the use of economic incentives, marketable permits, emissions trading, or similar programs in:

(a) The state implementation plan (SIP); or

(b) A federal requirement.

(3) Sources requesting a minor permit revision shall submit the appropriate Forms DEP7007A [†] to DD, including:

(a) A description of the change, and the resulting change in emissions;

(b) New applicable requirements that will apply after the change;

(c) Certification by a responsible official pursuant to Section 23 of this administrative regulation that the change meets the criteria for use of minor permit revision procedures, and a request for their use;

(d) A suggested draft permit showing only the information that is new or different than the existing permit; and

(e) Completed forms for the cabinet to notify the U.S. EPA and affected states.

(4) The source may implement the change immediately upon filing a complete application.

(a) After the source makes the change, and until the cabinet takes any of the actions specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits", the source shall comply with:

1. The applicable requirements governing the change; and

2. The proposed permit terms and conditions.

(b) Until the cabinet takes an action specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits":

1. The source shall not be required to comply with the existing permit terms and conditions it seeks to modify, unless the source fails to comply with its proposed permit terms and conditions; and

2. If the source fails to comply with its proposed permit terms and conditions, the existing permit terms and conditions it seeks to modify may be enforced against it.

(c) If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

(5) The permit shield shall not extend to minor permit revisions.

Section 15. Group Processing of Minor Permit Revisions. (1) Group processing shall be used only for permit revisions that:

(a) Meet the criteria for minor permit revisions; and

(b) Are collectively below the following thresholds:

1. Ten (10) percent of the emissions allowed in the permit for the emission unit or units affected by the change; and

2. The lesser of twenty (20) percent of the applicable major source threshold or five (5) tpy.

(2) A source with two (2) or more pending minor permit revisions may apply for group processing by submitting:

(a) A written request to use group processing;

(b) A list of pending permit revision applications awaiting group processing, and a determination of whether the sum of all the revisions will equal or exceed a threshold [thresholds] in this section;

(c) Certification by a responsible official pursuant to Section 23 of this administrative regulation that all the pending revisions meet the criteria for use of group processing procedures;

(d) A list of new requirements that will apply after each revision is made;

(e) A suggested draft permit showing only the information that is new or different than the existing permit;

(f) Certification that the source has notified the U.S. EPA of the proposed permit revision and included a brief description of the change; and

(g) Completed forms for the cabinet to notify the U.S. EPA and affected states.

(3) The source may implement the changes immediately upon filing a complete application.

(a) After the source makes the change, and until the cabinet takes any of the actions specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits", the source shall comply with:

1. The applicable requirements governing the change; and

2. The proposed permit terms and conditions.

(b) Until the cabinet takes an action specified in Section 2-VI.3.a of "Cabinet Provisions and Procedures for issuing Title V Permits":

1. The source shall not be required to comply with the existing permit terms and conditions it seeks to modify, unless the source fails to comply with its proposed permit terms and conditions; and

2. If the source fails to comply with its proposed permit terms and conditions, the existing permit terms and conditions it seeks to modify may be enforced against it.

(c) If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

(4) The permit shield shall not extend to permit revisions eligible for group processing.

Section 16. Significant Permit Revisions. (1) Except as provided in the Acid Rain Program, significant permit revision procedures shall be used for revisions that:

(a) Involve significant changes in the monitoring requirements or a relaxation in the reporting or recordkeeping requirements contained in the permit; or

(b) Do not qualify as administrative permit amendments or minor permit revisions.

(2) Significant permit revisions shall follow the same procedures that are required for initial permits and permit renewals.

(3) The permit shield shall extend to significant permit revisions.

Section 17. Off-Permit [and Section 502(b)(10)] Changes. (1) A permit revision shall not be required for changes that:

- (a) Are not modifications under Title I of the Act;
- (b) Are not subject to the Acid Rain Program;
- (c) Do not violate any existing terms or conditions of the permit;

and

(d) Meet all applicable requirements. [Are neither addressed nor prohibited in the permit; or

(b) Qualify as a change under 42 USC 7661a(b)(10);]

(2) Except for changes that qualify as insignificant activities under Section 6 of this administrative regulation, sources shall notify the cabinet and the U.S. EPA in writing at least seven (7) workdays prior to making each change. The notification shall include:

- (a) A brief description of the change;
- (b) The date on which the change will occur;
- (c) Any change in emissions or pollutants that result from the change; and

(d) Any new applicable requirements that will apply after the change. [Sources may make these changes without a permit revision if:

(a) The change does not cause emissions to exceed those allowed in the permit, expressed as an emission rate or total emissions; and

(b) The change is not:

- 1. A modification under Title I of the Act; or
- 2. Subject to the acid rain provisions in Title IV of the Act;]

(3) Sources shall keep records describing:

(a) Off-permit changes that resulted in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit; and

(b) The emissions that resulted from those changes. [A source proposing to make a change pursuant to this section shall notify the cabinet and the U.S. EPA at least seven (7) workdays prior to making the change. The notice shall include:

- (a) A description of the change;
- (b) The date on which the change will occur;
- (c) Any resulting changes in emissions; and
- (d) Any permit terms or conditions that will no longer be applicable after the change;]

(4) Sources shall keep a copy of each change notice on file with the permit. [The source shall keep a copy of the notice on file with the permit;]

(5) The permit shield shall not extend to changes made under this section.

(6) Changes made under this section shall be incorporated into the permit upon renewal.

Section 18. Section 502(b)(10) Changes. (1) A permit revision shall not be required for changes that:

- (a) Are not modifications under Title I of the Act;
- (b) Are not subject to the Acid Rain Program; and
- (c) Do not exceed the emissions allowed under the permit.

(2) Sources shall notify the cabinet and the U.S. EPA, in writing at least seven (7) workdays prior to making each change. The notification shall include:

- (a) A brief description of each change;
- (b) The date on which the change will occur;
- (c) Any change in emissions that will result; and
- (d) Any permit term or condition that will no longer be applicable after the change.

(3) Sources shall keep a copy of each change notice on file with the permit.

(4) The permit shield shall not extend to changes made under this section.

(5) Changes made under this section shall be incorporated into the permit upon renewal.

Section 19. Reopening for Cause. (1) A permit shall be reopened prior to expiration, if:

(a) An affected source or a source with a remaining permit term of three (3) or more years becomes subject to a new applicable requirement. A reopening:

1. Shall be completed not later than eighteen (18) months after promulgation of the new applicable requirement; and

2. Shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to Section 12(6) of this administrative regulation; or [New requirements become applicable to a source with a remaining permit term of three (3) or more years;]

(b) New requirements become applicable to an affected source subject to the Acid Rain Program; or

(c) The cabinet or the U.S. EPA determines that:

1. The permit contains a material mistake or an inaccurate statement was made when establishing the standards, terms or conditions of the permit; or

2. It is necessary to revise or revoke the permit to assure compliance with applicable requirements.

(2) Reopening a permit:

(a) Shall follow the same procedures as initial permits; and

(b) Shall affect only those parts of the permit for which cause to reopen exists.

(3) Permit reopenings shall be made as expeditiously as practicable. [The source shall submit an application for a permit revision within six (6) months after notification by the cabinet;]

(4) The permit and all its terms and conditions, including any permit shield that has been issued pursuant to Section 11 of this administrative regulation, shall remain in effect until the revised permit has been issued or denied.

Section 20. [19:] General Permits. The cabinet may, after notice and opportunity for public participation provided in 401 KAR 52:100, issue a general permit covering similar sources in the same source category.

(1) A general permit shall require compliance with all requirements applicable to other permits and shall identify criteria by which sources may qualify for coverage.

(2) Sources that qualify for a general permit may:

(a) Apply to the cabinet for coverage under the terms of the general permit; or

(b) Apply for an individual permit under this administrative regulation.

(3) An application for a general permit shall meet the requirements of this administrative regulation and shall include information necessary to determine qualification for, and to assure compliance with, the general permit.

(4) If the cabinet determines that a source does not meet the criteria for a general permit, the application shall be processed as a single-source permit pursuant to this administrative regulation.

(5) The permit shield shall apply to general permits.

(6) If a source applies for and receives a general permit and is later determined not to qualify for the permit's terms and conditions:

(a) The source shall be subject to enforcement action for operating without a permit; and

(b) The permit shield shall not be a defense to this violation.

(7) General permits shall not be authorized for affected sources except as provided in the Acid Rain Program.

(8) Coverage granted under a general permit shall not be a final permit action for purposes of judicial review unless the public review procedures in 401 KAR 52:100 are met.

[Section 20. Temporary Replacement Units. The cabinet may authorize the temporary use of an emission unit to replace a similar unit that is taken off-line for maintenance, if the following conditions are met:

(1) The owner or operator shall submit to the cabinet, at least ten (10) days in advance of replacing a unit, the appropriate Forms DEP7007A1 to DD that show:

(a) The size and location of both the original and replacement units; and

(b) Any resulting change in emissions;

(2) The PTE of the replacement unit shall not exceed that of the

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

original unit by more than twenty-five (25) percent of a major source threshold;

(3) The PTE of the replacement unit or the resulting PTE of the source shall not subject the source to a new applicable requirement;

(4) The replacement unit shall comply with all applicable requirements; and

(5) Within six (6) months after installing the replacement unit, the owner or operator shall:

(a) Reinstall the original unit; or

(b) Submit an application to permit the replacement unit as a permanent change.]

Section 21. Compliance Certifications. (1) **Sources shall certify compliance with all applicable requirements annually using Form DEP7007CC:**

(a) **Sources with Title V permits issued prior to December 31, 2000 shall submit their certification in 2001 on the permit anniversary, unless otherwise instructed by the local regional office.**

(b) **All sources, including those that have not received a Title V permit, shall submit their certification in 2002 and each year thereafter on or before January 30, except that sources who submitted a certification after September 30, 2001, shall not be required to submit their next certification until January 30, 2003.** [By January 30 of each year, sources subject to this administrative regulation shall submit an annual compliance certification for all applicable requirements.]

(2) The compliance certification shall contain the following information for each term or condition of the permit that is the basis for the certification:

(a) Identification of the term or condition;

(b) Compliance status;

(c) ~~Whether compliance was intermittent or continuous;~~

(d) ~~The method used for determining compliance over the reporting period, and whether the method provided continuous or intermittent data; and~~

(d) [(e)] The method currently used for determining compliance.

(3) Compliance certifications shall be mailed to the Division for Air Quality, Central Files, 803 Schenkel Lane, Frankfort, Kentucky 40601, and a copy sent to the U.S. EPA and to the appropriate Regional Office listed in Section 26 of this administrative regulation.

Section 22. Annual Emissions Certification. An annual emission certification shall be submitted to the cabinet by sources subject to this administrative regulation.

(1) During the first quarter of each calendar year, the cabinet shall survey each source to determine its actual emissions during the preceding calendar year, and the source shall provide and certify the information requested and return the updated survey to the cabinet within thirty (30) days from the date that the survey is mailed to the source [by the date indicated in the cover letter].

(2) Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation.

(3) If no response is received from a source, the cabinet may estimate its actual emissions based on prior history and other relevant information that is available.

(4) Failure by the cabinet to notify a source shall not relieve the source of its obligation to submit an annual emissions statement.

Section 23. Certification by Responsible Official. A responsible official shall certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the following documents are true, accurate, and complete:

(1) Applications for initial permits, permit revisions, and permit renewals;

(2) Reports;

(3) Compliance certifications; and

(4) Emissions certifications.

Section 24. Emergency Provision. (1) An emergency shall be an affirmative defense to enforcement actions brought for noncompliance with a technology-based emission standard if the source demonstrates through properly signed, contemporaneous operating logs, or

other relevant evidence that:

(a) An emergency occurred and the permittee can identify the cause of the emergency [The source demonstrates that the incident meets the criteria for an emergency];

(b) The permitted facility was at the time being properly operated;

(c) The source took all reasonable steps to minimize excess emissions during the emergency; and

(d) [(e)] The source notified the cabinet as quickly as possible and followed-up, as soon as practicable but not later than ten (10) [with a written report within two (2)] workdays after the emergency occurred, with a written report that contains:

1. A description of the emergency;

2. Any steps taken to mitigate emissions; and

3. The corrective actions taken.

(2) In an enforcement proceeding seeking to establish that an emergency occurred, the burden of proof shall rest with the source.

(3) This provision shall be in addition to any emergency or upset provision contained in an applicable requirement.

Section 25. Public, Affected State, and U.S. EPA Review. All permits, permit renewals, and permit revisions issued under this administrative regulation, other than administrative permit amendments [and minor permit revisions], shall be offered for review by the public, affected states, and the U.S. EPA pursuant to 401 KAR 52:100.

Section 26. Incorporation by Reference. (1) "Cabinet Provisions and Procedures for Issuing Title V Permits", June 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky, 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material may also be obtained:

(a) By Email request to:

NREPC.DEPAirPermits@mail.state.ky.us; or

(b) On the internet at:

www.nr.state.ky.us/nrepc/dep/daq/prb.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 12, 2000)

401 KAR 52:030. Federally-enforceable permits for nonmajor sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 70, 42 USC 7661 to 7661(f)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100,

224.20-110, 224.20-120, 40 CFR Part 70, 42 USC 7661 to 7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to **promulgate** [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for air contaminant sources located in Kentucky that accept emission limitations to avoid the New Source Review requirements under Title I of the Clean Air Act or the Operating Permit Program requirements under Title V of the Clean Air Act.

Section 1. Applicability. This administrative regulation shall apply to sources that accept permit conditions that are legally and practically enforceable to limit their potential to emit (PTE) below the major source thresholds that would make them subject to 401 KAR 52:020 [50:020].

Section 2. Exemptions. (1) The following sources shall be exempt from this administrative regulation:

- (a) Sources required to be registered under 401 KAR 52:070;
- (b) Sources required to be permitted under 401 KAR 52:040;
- (c) Sources required to be permitted under 401 KAR 52:020; and
- (d) Sources subject only to the requirements of 40 CFR 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters.

(2) The following activities shall be exempt from this administrative regulation:

- (a) Vehicles used for the transport of passengers of freight;
- (b) Publicly-owned roads; [-];
- (c) Asbestos demolition or renovation operations subject only to an applicable requirement in 401 KAR Chapter 58; and
- (d) Open burning covered under 401 KAR 63:005[-; and
- (e) ~~Activities or emission units contained in the "List of Trivial Activities", which the cabinet shall maintain and make available:~~

~~1. On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, Email: NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787; and~~

~~2. On the internet at:~~

~~www.nr.state.ky.us/nrepc/dep/daq/prb/trivial.html].~~

Section 3. General Provisions. (1) Sources subject to this administrative regulation shall:

- (a) Not construct, reconstruct, or modify without a permit issued under this administrative regulation, except as provided in Sections 13, 14, 15, and 17 of this administrative regulation;

- (b) Operate in compliance with a permit issued under this administrative regulation;

- (c) Demonstrate compliance with applicable requirements if requested by the cabinet;

- (d) Comply with 401 KAR 50:038, Emissions fee, if applicable;

- (e) Submit an annual compliance certification [demonstration] pursuant to Section 21 of this administrative regulation; and

- (f) 1. Allow authorized representatives of the cabinet to enter upon the premises at reasonable times:

- a. To access and copy any records required by the permit;
- b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and
- c. To sample or monitor substances or parameters to determine compliance with the permit and all applicable requirements.

2. Reasonable times shall be:

- a. During all hours of operation;
- b. During normal office hours; or
- c. During an emergency.

- (2)(a) Permits issued to construct, reconstruct, or modify a source shall become invalid if the permitted action:

- 1. Is not commenced within eighteen (18) months after the date the permit is issued;

- 2. Begins but is discontinued for a period of eighteen (18) months or more; or

- 3. Is not completed within eighteen (18) months of the scheduled completion date.

- (b) The cabinet may extend these time periods if the source shows good cause.

- (c) For phased construction projects, each phase shall commence construction within eighteen (18) months of the projected and approved commencement dates.

- (3) For sources that construct, reconstruct, or modify shall demonstrate compliance pursuant to 401 KAR 50:055 as follows:

- (a) Constructing [New] or reconstructing sources shall demonstrate compliance with all applicable requirements;

- (b) Modifying sources shall demonstrate compliance with all requirements that:

- 1. Become applicable following the modification; or
- 2. May be affected as a result of the modification; and

- (c) Sources that have not demonstrated compliance during the prescribed timeframe given in 401 KAR 50:055 shall operate only for purposes of demonstrating compliance unless otherwise authorized by an approved compliance plan or an order of the cabinet.

- (4) Sources that are located in ozone nonattainment areas and emit or have the potential to emit 25 tpy or more of VOC or NOx shall submit an annual emission certification pursuant to Section 25(2) of this administrative regulation.

Section 4. Applying for a Permit, Permit Revision, or Permit Renewal. (1) Complete applications shall be submitted using Forms DEP7007A[1] to DD, which are [is] incorporated by reference in 401 KAR 52:050, for the following permit actions:

- (a) Initial permits for [new] sources commencing construction;

- (b) Initial permits for [existing] sources that become subject to this administrative regulation as the result of a change;

- (c) Renewal permits; and

- (d) Permit revisions, including administrative permit amendments, minor permit revisions, significant permit revisions, and modifications at sources that do not have source-wide permits.

- (2) A complete application shall contain the information specified in Section 5 of this administrative regulation, except that:

- (a) Forms DEP7007AA, BB, and CC shall not be required for a source commencing construction unless a compliance plan is required under Section 3(3)(c) of this administrative regulation [A compliance plan or schedule (Forms DEP7007AA, BB, and CC) shall not be required for applications to construct a new source];

- (b) Applications for permit revisions shall provide only the information related to the change; and

- (c) Applications for permit renewals shall provide only the information that is new or different from the most recent source-wide permit application.

- (3) Sources that submit an application with a claim of confidential information shall:

- (a) Authorize the cabinet to submit the information to the U.S. EPA; or

- (b) Submit the information directly to the U.S. EPA.

- (4) Completed application forms shall be submitted to Kentucky Division for Air Quality, Attn: Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601:

- (a) For initial permits, minor permit revisions, significant permit revisions, and permit renewals, in triplicate (original plus two (2) copies); and

- (b) For administrative permit amendments, the original only.

- (5) The cabinet may request up to seven (7) additional copies of the completed application form if needed for public review.

- (6) Forms DEP 7007A[1] to DD may be obtained:

- (a) By contacting the Kentucky Division for Air Quality, Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, Email:

NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787;

or

- (b) On the internet at:

www.state.ky.us/nrepc/dep/daq/prb/daqapp.htm.

Section 5. Information Required on Application. Applications shall contain:

- (1) All the information needed to determine the applicable requirements and applicable emission fees;

- (2) The following administrative information:

- (a) Company name and address and, if different, plant name and address;

- (b) Owner's and agent's names and addresses;
- (c) Name, address, and phone number of the plant site manager or contact;
- (d) Description of the source's processes and products; and
- (e) Appropriate SIC code;
- (3) The following emissions-related information:
 - (a) All emissions of regulated air pollutants, except those exempted in Section 2(2) of this administrative regulation;
 - (b) All fugitive emissions listed in the same manner as stack emissions;
 - (c) Additional information, if needed to verify which requirements are applicable;
 - (d) Identification of the applicable requirements for each emissions unit;
 - (e) Identification and description of all emission units and emission points in sufficient detail to establish the basis for applicable requirements and applicable emission fees;
 - (f) Emission rates in terms necessary to determine compliance with applicable requirements;
 - (g) Fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to determine or to limit emissions;
 - (h) Other information required by an applicable requirement, including stack height limitations developed pursuant to 401 KAR 50:042; and
 - (i) Calculations on which the information in this paragraph is based;
- (4) Citation and description of all applicable requirements, and the applicable test method for determining compliance with each;
- (5) An explanation of proposed exemptions to otherwise applicable requirements;
- (6) Other information if needed to implement and enforce other applicable requirements or to determine their applicability;
- (7) If applicable, information needed to determine the applicable requirements and emission fees, and to define the permit terms and conditions for:
 - (a) Each alternate operating scenario; and
 - (b) Emissions trading under federally-enforceable emissions caps;
- (8) A compliance plan containing:
 - (a) The compliance status for all applicable requirements, including:
 - 1. For requirements with which the source is in compliance, a statement that the source will continue to comply; and
 - 2. For requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance;
 - (b) A compliance schedule, including:
 - 1. For applicable requirements that will become effective during the permit term, a statement that the source will comply on a timely basis, unless a more detailed schedule is called for in the applicable requirement; and
 - 2. For requirements with which the source is not in compliance, remedial measures leading to compliance, including checkpoints and scheduled completion dates; and
 - (c) For sources required to have a schedule of compliance to remedy a violation or noncompliance, a schedule for submission of certified progress reports no less frequent than every six (6) months;
 - (9) A certification of compliance with all applicable requirements by a responsible official;
 - (10) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and test methods;
 - (11) A schedule for submission of compliance certifications during the permit term, to be submitted annually or more frequently if specified by the cabinet or in an applicable requirement;
 - (12) A statement describing the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements; and
 - (13) Insignificant activities as specified in Section 6 of this administrative regulation.

Section 6. Insignificant and Trivial Activities. (1) Activities that meet the following conditions shall be classified as insignificant activities:

- (a) The PTE from each activity shall not exceed:

- 1. One-half (1/2) tpy of combined HAPs; or [a HAP;]
- 2. ~~[One and one-half (1-1/2) tpy of combined HAPs; or~~ 3.] Five (5) tpy of a nonhazardous regulated air pollutant;
- (b) The activity shall not involve the incineration of medical waste; ~~[and]~~
- (c) The activity shall not be subject to a federally-enforceable requirement, other than generally applicable requirements; and
- (d) The sum of the PTE from all insignificant activities, when added with the source's other potential emissions, shall not cause the source to exceed a major source threshold or a limit contained in the permit to avoid major source applicability under Title I or Title V of the Act.
- (2) In applications for permits, permit revisions, and permit renewals, sources shall:
 - (a) Include descriptions for all insignificant activities;
 - (b) Include all applicable requirements for each insignificant activity; and
 - (c) Not be required to provide detailed estimates for insignificant activities.
- (3) A list of insignificant activities and generally applicable requirements approved by the cabinet shall be maintained and made available on request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, Email: NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787.
- (4) The cabinet shall maintain a list of approved trivial activities, which shall not be required to be included in permit applications. The list shall be made available:
 - (a) On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, e-mail: NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787; or
 - (b) On the Internet at: www.nr.state.ky.us/nrepc/dep/daq/prb/trivial.html.

Section 7. Duty to Supplement or Correct Application. (1) An applicant who fails to submit relevant facts or who has submitted incorrect information in an application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information.

(2) If new requirements become applicable to a source after the application is submitted, but before a draft permit is issued, the applicant shall promptly provide the supplemental information to the cabinet.

(3) Failure to supplement or correct an application shall be a violation of this administrative regulation and may result in:

- (a) Termination of a permit;
- (b) Revocation and reissuance of a permit;
- (c) Revision of a permit; or
- (d) Denial of a permit.

Section 8. Application Shield. (1) If a ~~[an existing]~~ source submits a timely and complete application for a source-wide permit or permit renewal, the source's failure to have a permit shall not be a violation of this administrative regulation unless the cabinet makes a final determination to deny the permit or permit renewal.

(2) A source's authority to operate shall cease to apply if the source fails to submit additional information requested by the cabinet, by the deadline set by the cabinet, after the completeness determination has been made.

Section 9. Completeness Review and Determination. Applications shall be reviewed by the cabinet for completeness pursuant to Section 2-1 of "Cabinet Provisions and Procedures for Issuing Federally-Enforceable Permits for Nonmajor Sources," which is incorporated by reference in Section 26 of this administrative regulation, for:

- (1) Initial permits for ~~[new]~~ sources commencing construction;
- (2) ~~[The first Title V permit for existing sources;~~
- (3) Significant permit revisions; and
- (4) Permit renewals.

Section 10. Permit Content. Permits shall contain terms and conditions as provided in Sections 1a to 1c of "Cabinet Provisions and Procedures for Issuing Federally-Enforceable Permits for Nonmajor

Sources."

Section 11. Permit Shield. (1) Compliance with the conditions of a permit shall be considered in compliance with all applicable requirements if:

(a) The applicable requirements are included and specifically identified in the permit; or

(b) The cabinet, in reviewing the application, determines that other specifically identified requirements are not applicable to the source, and this determination is stated in the permit.

(2) A permit shall not have a permit shield unless the permit expressly states that a shield exists.

(3) A permit shield shall not protect the owner or operator from enforcement for violating an applicable requirement prior to or at the time of permit issuance.

Section 12. Permit Duration and Renewal. (1) Permits issued pursuant to this administrative regulation shall remain in effect for five (5) years, except that permits for municipal waste incinerators shall remain in effect for twelve (12) years and shall be reviewed by the cabinet every five (5) years.

(2) An application for a permit renewal shall be submitted at least six (6) months prior to expiration of the current permit.

(3) Expiration of a permit shall terminate the source's authority to operate unless the source has submitted a timely and complete renewal application.

(4) All terms and conditions of the previous permit, including the permit shield, shall remain in effect until the renewal permit has been issued or denied, if:

(a) The cabinet fails to issue or deny the renewal permit before the expiration of the previous permit; and

(b) The source has submitted a timely and complete renewal application.

Section 13. Administrative Permit Amendments. (1) The following permit revisions may be processed as administrative permit amendments:

- (a) Correct typographical errors;
- (b) Change the name, address, or phone number of a person identified in the permit, or make similar administrative changes;
- (c) Change in ownership or operational control;
- (d) Require more frequent monitoring or reporting; and
- (e) Add an insignificant activity.

(2) Sources requesting an administrative permit amendment shall submit the appropriate Forms DEP7007A [†] to DD reflecting the desired change and may implement the change immediately upon submittal.

(3) For administrative permit amendments in which the owner or person to whom a permit is issued changes, the following information shall be submitted to the cabinet within ten (10) days following the change:

(a) Administrative Information Forms DEP7007A [†] showing the names and other information that has changed; and

(b) If ownership has changed, a signed written agreement specifying the date of transfer of permit responsibility, coverage, and liability.

Section 14. Minor Permit Revisions. (1) The procedures in this section shall be used for permit revisions that:

- (a) Do not violate an applicable requirement;
- (b) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- (c) Do not require or change a case-by-case determination of:

- 1. An emission limitation or other standard;
- 2. A source-specific determination for temporary sources of ambient impacts; or
- 3. A visibility or increment analysis;

(d) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and which the source has assumed to avoid an otherwise applicable requirement, including:

- 1. A federally enforceable emissions cap assumed to avoid classification as a modification under Title I; and

2. An alternative emissions limit approved pursuant to 42 USC 7412(i)(5);

(e) Are not modifications under Title I of the Act; and

(f) Are not required to be processed as significant permit revisions.

(2) The procedures in this section may be used for changes involving the use of economic incentives, marketable permits, emissions trading, or similar programs in:

(a) The state implementation plan (SIP); or

(b) A federal requirement.

(3) Applications for minor permit revisions shall include:

(a) A description of the change, and the resulting change in emissions;

(b) New requirements that will apply after the change;

(c) Certification that the change meets the criteria for use of minor permit revision procedures, and a request for their use; and

(d) A suggested draft permit showing only the information that is new or different than the existing permit.

(4) The source may implement the change immediately upon filing a complete application.

(5) The permit shield shall not extend to minor permit revisions.

Section 15. Group Processing of Minor Permit Revisions. (1) Group processing shall be used only for permit revisions that:

(a) Meet the criteria for minor permit revisions; and

(b) Are collectively below the following thresholds:

1. Ten (10) percent of the emissions allowed in the permit for the emission unit or units affected by the change; and

2. The lesser of twenty (20) percent of the applicable major source threshold or five (5) tpy.

(2) A source with two (2) or more pending minor permit revisions may apply for group processing by submitting:

(a) A written request to use group processing;

(b) A list of pending permit revision applications awaiting group processing, and a determination of whether the sum of all the revisions will equal or exceed a thresholds in this section;

(c) Certification that all the pending revisions meet the criteria for use of group processing procedures;

(d) A list of new requirements that will apply after each revision is made; and

(e) A suggested draft permit showing only the information that is new or different than the existing permit.

(3) The source may implement the changes immediately upon filing a complete application.

(4) The permit shield shall not extend to permit revisions eligible for group processing.

Section 16. Significant Permit Revisions. (1) Significant permit revision procedures shall be used for revisions that:

(a) Involve significant changes in the monitoring requirements or a relaxation in the reporting or recordkeeping requirements contained in the permit; or

(b) Do not qualify as administrative permit amendments or minor permit revisions.

(2) Significant permit revisions shall follow the same procedures that are required for initial permits and permit renewals.

(3) The permit shield shall extend to significant permit revisions.

Section 17. Off-Permit and Section 502(b)(10) Changes. (1) Off-permit changes.

(a) A permit revision shall not be required for changes that:

1. Are not modifications under Title I of the Act;

2. Do not violate any terms or conditions of the permit; and

3. Meet all applicable requirements.

(b) Except for changes that qualify as insignificant activities under Section 6 of this administrative regulation, sources shall notify the cabinet in writing at least seven (7) workdays in advance of each change. The notification shall include:

1. A brief description of the change;

2. The date on which the change will occur;

3. Any change in emissions or pollutants that result from the change; and

4. Any new applicable requirements that will apply after the change.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(c) Sources shall keep records describing:

1. Off-permit changes that resulted in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit; and

2. The emissions that resulted from those changes.

(2) Section 502(b)(10) changes.

(a) A permit revision shall not be required for changes that:

1. Are not modifications under Title I of the Act; and

2. Do not exceed the emissions allowed under the permit.

(b) Sources shall notify the cabinet in writing at least seven (7) workdays in advance of each change. The notification shall include:

1. A brief description of each change;

2. The date on which the change will occur;

3. Any change in emissions that will result; and

4. Any permit term or condition that will no longer be applicable after the change.

(3) For all changes made under this section:

(a) Sources shall keep a copy of each change notice on file with the permit;

(b) The permit shield shall not extend to these changes; and

(c) Changes shall be incorporated into the permit upon renewal. [A permit revision shall not be required for changes that:

(a) Are neither addressed nor prohibited in the permit; or

(b) Qualify as a change under 42 USC 7661a(b)(10);

(2) Sources may make these changes without a permit revision if:

(a) The change does not cause emissions to exceed those allowed in the permit, expressed as an emission rate or total emissions; and

(b) The change is not a modification under Title I of the Act.

(3) A source proposing to make a change pursuant to this section shall notify the cabinet at least seven (7) workdays prior to making the change. A copy of the notice shall be attached to the permit and shall contain the following information:

(a) A description of the change;

(b) The date on which the change will occur;

(c) The resulting change in emissions; and

(d) Any permit terms or conditions that will no longer be applicable after the change.

(4) The permit shield shall not extend to changes made under this section.

(5) Changes made under this section shall be incorporated into the permit upon renewal.]

Section 18. Reopening for Cause. (1) A permit shall be reopened prior to expiration, if:

(a) New requirements become applicable to a source with a remaining permit term of three (3) or more years; or

(b) The cabinet or the U.S. EPA determines that:

1. The permit contains a material mistake or an inaccurate statement was made when establishing the standards, terms or conditions of the permit; or

2. It is necessary to revise or revoke the permit to assure compliance with applicable requirements.

(2) Reopening a permit:

(a) Shall follow the same procedures as initial permit; and

(b) Shall affect only those parts of the permit for which cause to reopen exists.

[(3) The source shall submit an application for a permit revision within six (6) months after notification by the cabinet.]

Section 19. General Permits. The cabinet may issue a general permit covering similar sources in the same source category.

(1) A general permit shall require compliance with all requirements applicable to other permits and shall identify criteria by which sources may qualify for coverage.

(2) Sources that qualify for a general permit may:

(a) Apply to the cabinet for coverage under the terms of the general permit; or

(b) Apply for an individual permit under this administrative regulation.

(3) An application for a general permit shall include information necessary to determine qualification for, and to assure compliance with, the general permit.

(4) If the cabinet determines that a source does not meet the criteria for a general permit, the application shall be processed as a single-source permit pursuant to this administrative regulation.

(5) The permit shield shall apply to general permits.

(6) If a source applies for and receives a general permit and is later determined not to qualify for the permit's terms and conditions:

(a) The source shall be subject to enforcement action for operating without a permit; and

(b) The permit shield shall not be a defense to this violation.

Section 20. Temporary Replacement Units. The cabinet may authorize the temporary use of an emission unit to replace a similar unit that is taken off-line for maintenance, if the following conditions are met:

(1) The owner or operator shall submit to the cabinet, at least ten (10) days in advance of replacing a unit, the appropriate Forms DEP7007A [1] to DD that show:

(a) The size and location of both the original and replacement units; and

(b) Any resulting change in emissions;

(2) The PTE of the replacement unit shall not exceed that of the original unit by more than twenty-five (25) percent of a major source threshold, and the emissions from the unit shall not cause the source to exceed the emissions allowable under the permit;

(3) The PTE of the replacement unit or the resulting PTE of the source shall not subject the source to a new applicable requirement;

(4) The replacement unit shall comply with all applicable requirements; and

(5) Within six (6) months after installing the replacement unit, the owner or operator shall:

(a) Reinstall the original unit; or

(b) Submit an application to permit the replacement unit as a permanent change.

Section 21. Compliance Certifications. (1) Sources whose permits contain a requirement for annual compliance certifications shall certify compliance with all terms and conditions in the permit using Form DEP7007CC:

(a) Sources with permits issued prior to December 31, 2000 shall submit their certification in 2001 on the permit anniversary, unless otherwise instructed by the local regional office.

(b) All sources (required to submit a certification) shall submit their certification in 2002 and each year thereafter on or before January 30, except that sources who submitted a certification after September 30, 2001, shall not be required to submit their next certification until January 30, 2003. [By January 30 of each year, sources subject to this administrative regulation shall submit to the cabinet an annual compliance certification for all applicable requirements.]

(2) The compliance certification shall contain the following information for each term or condition of the permit that is the basis for the certification:

(a) Identification of the term or condition;

(b) Compliance status;

(c) [Whether compliance was intermittent or continuous;

(d)] The method used for determining compliance over the reporting period, and whether the method provided continuous or intermittent data; and

(d) [(e)] The method currently used for determining compliance.

(3) Compliance certifications shall be mailed to the Division for Air Quality, Central Files, 803 Schenkel Lane, Frankfort, Kentucky 40601, and a copy sent to the appropriate Regional Office listed in Section 26 of this administrative regulation.

Section 22. Certification by Responsible Official. A responsible official shall certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the following documents are true, accurate, and complete:

(1) Applications;

(2) Reports;

(3) Compliance certifications; and

(4) Emissions certifications.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Section 23. Emergency Provision. (1) An emergency shall be an affirmative defense to enforcement actions brought for noncompliance with a technology-based emission standard if:

(a) The source demonstrates that the incident meets criteria for an emergency;

(b) The source took all reasonable steps to minimize excess emissions; and

(c) The source notified the cabinet as quickly as possible and followed-up with a written report within two (2) workdays after the emergency occurred.

(2) In an enforcement proceeding seeking to establish that an emergency occurred, the burden of proof shall rest with the source.

(3) This provision shall be in addition to any emergency or upset provision contained in an applicable requirement.

Section 24. Public Review. Initial permits, significant permit revisions, and permit renewals issued under this administrative regulation shall be offered for public review pursuant to 401 KAR 52:100.

Section 25. Sources Subject to Title V. (1) Unless exempted in a future rulemaking by the U.S. EPA, sources that are subject to federal standards promulgated under 42 USC 7411 (NSPS) or 42 USC 7412 (NESHAP) shall:

(a) Be subject to 42 USC 7661 to 7661f (Title V of the Act);

(b) Comply with 401 KAR 50:038, Emission fees;

(c) Submit annual emissions certifications pursuant to subsection (2) of this section; and

(d) Submit an application for a permit under 401 KAR 52:020 within one (1) year following promulgation of a final rulemaking by the U.S. EPA requiring the source to obtain a Title V permit.

(2) During the first quarter of each calendar year, the cabinet shall survey each source to determine its actual emissions during the preceding calendar year, and the source shall provide and certify the information requested and return the updated survey to the cabinet within thirty (30) days from the date that the survey is mailed to the source [by the date indicated in the cover letter];

(a) Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation;

(b) If no response is received from a source, the cabinet may estimate its actual emissions based on prior history and other relevant information that is available; and

(c) Failure by the cabinet to notify a source shall not relieve the source of its obligation to submit an annual emissions statement.

Section 26. Incorporation by Reference. (1) "Cabinet Provisions and Procedures for Issuing Federally-Enforceable Permits for Non-major Sources," June 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky, 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material may also be obtained:

(a) By Email request to:

NREPC.DEPAirPermits@mail.state.ky.us; or

(b) On the internet at www.nr.state.ky.us/nrepc/dep/daq/prb.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 12, 2000)

401 KAR 52:040. State-origin permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7412, 7429

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7412, 7429

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for minor sources whose permits are not required to be federally enforceable.

Section 1. Applicability. This administrative regulation shall apply to:

(1) Sources that emit or have the potential to emit (PTE):

(a) More than twenty-five (25) and less than 100 tons per year (tpy) of a nonhazardous regulated air pollutant; and

(b) Less than ten (10) tpy of a HAP and less than twenty-five (25) tpy of combined HAPS; or

(2) Except as exempted in Section 2(1)(h) of this administrative regulation, minor source incinerators that are subject to an applicable requirement in:

(a) 401 KAR Chapter 59 or 61;

(b) 40 CFR Part 60 or 63; or

(c) A federal regulation promulgated under 42 USC 7429.

Section 2. Exemptions. (1) The following sources shall be exempt from this administrative regulation:

(a) Sources that are required to be registered under 401 KAR 52:070;

(b) Sources that are required to be permitted under 401 KAR 52:020 or 401 KAR 52:030;

(c) Sources that emit only pollutants for which there are no applicable requirements;

(d) Sources subject only to applicable requirements that clearly specify the method for achieving compliance;

(e) Sources that emit only nonprocess fugitive emissions;

(f) Sources subject only to the requirements of 40 CFR 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters;

(g) Sawmills that produce only rough-cut or dimensional lumber from logs and which have a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an applicable requirement in 401 KAR Chapter 59, 60, or 61; and

(h) Incinerators with unit capacities of less than 500 lbs/hr that are subject only to 401 KAR 59:020, 401 KAR 59:021, 401 KAR 61:010, or 401 KAR 61:011.

(2) The following activities shall be exempt from this administrative regulation:

(a) Vehicles used for the transport of passengers or freight;

(b) Publicly-owned roads;

(c) Asbestos demolition or renovation operations subject only to an applicable requirement in 401 KAR Chapter 58;

(d) Open burning covered under 401 KAR 63:005; and

(e) Activities or emission units contained in the "List of Trivial Activities", which the cabinet shall maintain and make available:

1. On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, Email:

NREPC.DEPAirPermits@mail.state.ky.us,

or fax (502) 573-3787; and

2. On the internet at:

www.nr.state.ky.us/nrepc/dep/daq/prb/trivial.html.

Section 3. General Provisions. (1) Sources subject to this administrative regulation shall:

(a) Obtain a permit prior to construction, reconstruction, or modification pursuant to Section 12 of this administrative regulation;

(b) Operate in compliance with a permit issued under this administrative regulation;

(c) Comply with all applicable requirements;

(d) Demonstrate compliance with applicable requirements if requested by the cabinet;

(e) Submit an annual compliance certification pursuant to Section 19 of this administrative regulation; and

(f) 1. Allow authorized representatives of the cabinet to enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept, at reasonable times:

a. To access and copy any records required by the permit;

b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and

c. To sample or monitor substances or parameters to determine compliance with the permit and applicable requirements.

2. Reasonable times shall be:

a. During all hours of operation;

b. During normal office hours; or

c. During an emergency.

(2) Unless exempted in a future rulemaking by the U.S. EPA, minor sources subject to federal standards promulgated under 42 USC 7411 (NSPS) or 42 USC 7412 (NESHAP) shall:

(a) Be subject to 42 USC 7661 to 7661f (Title V of the Act);

(b) Comply with 401 KAR 50:038, Emissions fee;

(c) Submit annual emissions certifications pursuant to Section 20 of this administrative regulation; and

(d) Submit an application for a permit under 401 KAR 52:020 within one (1) year following promulgation of a final rulemaking by the U.S. EPA requiring the source to obtain a Title V permit.

(3) Sources that are located in ozone nonattainment areas and emit or have the potential to emit 25 tpy or more of VOC or NOx shall submit an annual emission certification pursuant to Section 20 of this administrative regulation.

Section 4. Applying for a Permit, Permit Revision, or Permit Renewal. (1) Applications for permits, permit revisions, or permit renewals shall be made using Forms DEP7007A [1] to DD, which are incorporated by reference in 401 KAR 52:050.

(2) A complete application shall contain the information specified in Section 5 of this administrative regulation, except that:

(a) Forms DEP7007V to 7007Z shall not be required;

(b) Forms DEP7007AA, BB, and CC shall not be required for a source that is commencing construction unless a compliance plan is required under Section 12(4)(a) of this administrative regulation [A compliance plan or schedule (Forms DEP7007AA, BB, and CC) shall not be required for applications to construct a new source];

(c) Applications for permit revisions shall provide only the information related to the change; and

(d) Applications for permit renewals shall:

1. Provide only the information that is new or different from the most recent permit application for sources with source-wide permits; or

2. Be a complete application pursuant to Sections 5 and 15(5) of this administrative regulation for sources that have not applied for a source-wide permit.

(3) Completed application forms shall be submitted in triplicate (original plus two (2) copies) to Kentucky Division for Air Quality, Attn: Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(4) Forms DEP7007A [1] to DD may be obtained:

(a) By contacting the Kentucky Division for Air Quality, Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, Email:

NREPC.DEPAirPermits@mail.state.ky.us,

or fax (502) 573-3787; or

(b) On the Internet at:

www.state.ky.us/nrepc/dep/daq/prb/daqapp.htm.

Section 5. Information Required on Application. Complete applications shall include:

(1) All information needed to determine applicable requirements, including emission fees if applicable;

(2) The following administrative information:

(a) Company name and address and, if different, plant name and address;

(b) Owner's and agent's names and addresses;

(c) Name, address, and phone number of the plant site manager or contact;

(d) Description of the source's processes and products; and

(e) Appropriate SIC Codes;

(3) The following emissions-related information:

(a) All emissions of regulated air pollutants except those exempted in Section 2(2) of this administrative regulation;

(b) Additional information if needed to verify which requirements are applicable;

(c) Identification and description of all emission units in sufficient detail to establish the basis for applicable requirements;

(d) Emission rates in terms necessary to determine compliance with applicable requirements;

(e) Fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to determine emissions;

(f) Other information required by an applicable requirement, including stack height limitations developed in compliance with 401 KAR 50:042; and

(g) Calculations upon which the information in this paragraph is based.

(4) An explanation of proposed exemptions to otherwise applicable requirements;

(5) Additional information if needed to implement and enforce applicable requirements or to determine their applicability;

(6) If applicable, information needed to determine the applicable requirements and emission fees and to define the permit terms and conditions for each alternate operating scenario;

(7) A compliance plan containing:

(a) The compliance status for all applicable requirements, including:

1. For requirements that are in compliance, a statement that the source will continue to comply; and

2. For requirements that are not in compliance, a narrative description of how the source will achieve compliance;

(b) A compliance schedule, including:

1. For applicable requirements that will become effective during the permit term, a statement that the source will comply on a timely basis, unless a more detailed schedule is called for in the applicable requirement; and

2. For requirements that are not in compliance, remedial measures leading to compliance, including checkpoints and scheduled completion dates; and

(c) For sources required to have a schedule of compliance to remedy a violation or noncompliance, a schedule for submission of certified progress reports no less frequent than every six (6) months;

(8) A certification of compliance with all applicable requirements by a responsible official;

(9) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and test methods;

(10) A statement including the source's compliance status with applicable monitoring requirements;

(11) A schedule for submission of annual compliance certifications of this administrative regulation; and

(12) Insignificant activities as specified in Section 6 of this administrative regulation.

Section 6. Insignificant Activities. (1) Activities that meet the following conditions shall be classified as insignificant activities:

(a) The PTE from each activity shall not exceed:

1. One-half (1/2) tpy of combined HAPs; or [a HAP];

2. [One and one-half (1 1/2) tpy of combined HAPs; or

3- Five (5) tpy of a nonhazardous regulated air pollutant;
(b) The activity shall not involve the incineration of medical waste;
[and]

(c) The activity shall not be subject to a federally-enforceable requirement, other than generally applicable requirements; and

(d) The sum of the PTE from all insignificant activities, when added with the source's other potential emissions, shall not cause the source to exceed a major source threshold.

(2) In applications for permits, permit revisions, and permit renewals, sources shall:

(a) Include descriptions for all insignificant activities;

(b) Include all applicable requirements for each insignificant activity; and

(c) Not be required to provide detailed estimates for insignificant activities.

(3) A list of insignificant activities and generally applicable requirements approved by the cabinet shall be maintained and made available on request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, Email:

NREPC.DEPAirPermits@mail.state.ky.us,

or fax (502) 573-3787.

Section 7. Duty to Supplement or Correct Application. (1) An applicant who fails to submit relevant facts or who has submitted incorrect information in an application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information to the cabinet.

(2) If new requirements become applicable to a source after the application is submitted, but before a permit is issued, the applicant shall promptly provide the supplemental information to the cabinet.

(3) A source's authority to operate shall cease to apply if, by the deadline set by the cabinet, the source fails to submit additional information requested by the cabinet.

Section 8. Application Shield. (1) If a source submits a timely and complete application for a source-wide permit or permit renewal, the source's failure to have a permit shall not be a violation of this administrative regulation unless the cabinet makes a final determination to deny the permit or permit renewal.

(2) The application shield shall cease to exist if a source fails to supplement or correct an application pursuant to Section 7 of this administrative regulation.

Section 9. Completeness Review and Determination. Applications shall be reviewed by the cabinet for completeness pursuant to Section 2-1 "Cabinet Provisions and Procedures for Issuing State-Origin Permits", which is incorporated by reference in Section 23 of this administrative regulation, for:

(1) Initial source-wide permits;

(2) Permit revisions subject to Section 12 of this administrative regulation; and

(3) Permit renewals.

Section 10. Permit Content. Permits shall contain terms and conditions as provided in Sections 1a to 1c of "Cabinet Provisions and Procedures for Issuing State-Origin Permits."

Section 11. Permit Shield. (1) Compliance with the conditions of a permit shall be considered in compliance with all applicable requirements if:

(a) The applicable requirements are included and specifically identified in the permit; or

(b) The cabinet, in reviewing the application, determines that other specifically identified requirements are not applicable to the source, and this determination is stated in the permit.

(2) A permit shall not have a permit shield unless the permit expressly states that a shield exists.

(3) A permit shield shall not protect the owner or operator from enforcement actions for violating an applicable requirement prior to or at the time of permit issuance.

Section 12. Actions that Require a Permit or Permit Revision in Advance. (1) Sources shall obtain a permit or permit revision prior to

commencing construction for the following actions:

(a) Construction of a [new] source;

(b) Reconstruction of a [an-existing] source; or

(c) Modification at a source that will increase its PTE by:

1. Two and one-half (2 1/2) tpy or more of a HAP;

2. Seven and one-half (7 1/2) tpy or more of combined HAPs; or

3. Twenty-five (25) tpy or more of a nonhazardous regulated air pollutant.

(2) The source shall not commence construction, reconstruction, or modification until a permit or permit revision has been issued.

(3) For a source that is issued a permit to construct, reconstruct, or modify:

(a) The permit shall become invalid if the permitted action:

1. Is not commenced within eighteen (18) months after the permit is issued;

2. Begins but is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable timeframe; and

(b) The cabinet may extend these time periods if the source shows good cause.

(4) Sources that construct, reconstruct, or modify under this section:

(a) Shall demonstrate compliance with all applicable requirements pursuant to 401 KAR 50:055; and

(b) For sources that have not demonstrated compliance within the timeframes prescribed in 401 KAR 50:055, shall operate only for purposes of demonstrating compliance unless authorized under an approved compliance plan or an order of the cabinet.

Section 13. Actions that Do Not Require a Permit Revision in Advance. For all permit revisions except those in Section 12 of this administrative regulation, the source:

(1) Shall submit a complete application for a permit revision; and

(2) May implement the change immediately upon submittal of the application.

Section 14. Change of Ownership or Name of Permittee. If the owner or person to whom a permit is issued changes, the following information shall be submitted to the cabinet within ten (10) days following the change:

(1) The administrative information required by Form DEP7007A[1] showing the names and other information that has changed; and

(2) If ownership has changed, a signed written agreement specifying the date of transfer of permit responsibility, coverage, and liability.

Section 15. Permit Duration and Renewal. (1) Permits issued pursuant to this administrative regulation shall remain in effect for a period of ten (10) years.

(2) Applications for a renewal permit shall be submitted at least six (6) months prior to expiration of the existing permit.

(3) Expiration of a permit shall terminate the source's right to construct and operate unless a timely and complete renewal application has been submitted.

(4) All terms and conditions of the previous permit, including the permit shield, shall remain in effect until the renewal permit has been issued or denied if:

(a) The cabinet fails to issue or deny a renewal permit before the expiration of the previous permit; and

(b) The source has submitted a timely and complete renewal application.

(5) After the effective date of this administrative regulation, sources that have not applied for a source-wide permit shall submit a complete application for a source-wide permit the next time a permit held by the source is due for renewal.

Section 16. General Permits. The cabinet may issue a general permit covering similar sources in the same source category.

(1) A general permit shall require compliance with all requirements applicable to other permits and shall identify criteria by which sources may qualify for coverage.

(2) Sources that qualify for a general permit may:

(a) Apply to the cabinet for coverage under the terms of the gen-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

eral permit; or

(b) Apply for an individual permit under this administrative regulation.

(3) An application for a general permit shall include information necessary to determine qualification for, and to assure compliance with, the general permit.

(4) If the cabinet determines that a source does not meet the criteria for a general permit, the application shall be processed as a single-source permit pursuant to this administrative regulation.

(5) If a source applies for and receives a general permit and is later determined not to qualify for the permit's terms and conditions:

(a) The source shall be subject to enforcement action for operating without a permit; and

(b) The permit shield shall not be a defense to this violation.

Section 17. Portable Sources. (1) The cabinet may issue a permit that authorizes a source to move its entire operation from one location to another within the Commonwealth.

(2) Owners and operators of these sources shall:

(a) Notify the Division for Air Quality, Field Operations Branch, at (502) 573-3382, at least fifteen (15) days in advance of each relocation;

(b) Submit Administrative Information Form DEP7007A[†] to reflect the change in location; and

(c) Comply with all applicable requirements at each location.

(3) It shall be a violation of this administrative regulation and 40 CFR Part 70 for one (1) or more portable sources to operate on the same site or contiguous area if the combined PTE of all the sources operating at that site or the contiguous area exceeds a major source threshold.

Section 18. Temporary Replacement Units. The cabinet may authorize the temporary use of an emission unit to replace a similar unit that is taken off line for maintenance, if the following conditions are met:

(1) The owner or operator shall submit to the cabinet, at least ten (10) days in advance of replacing a unit, the appropriate Forms DEP7007A[†] to DD that show:

(a) The size and location of the original and replacement units; and

(b) Any resulting change in emissions;

(2) The PTE of the replacement unit shall not exceed that of the original unit by more than twenty-five (25) percent of a major source threshold, and the emissions from the unit shall not cause the source to exceed the emissions allowable under the permit;

(3) Neither the PTE of the replacement unit nor the resulting PTE of the source shall subject the source to a new applicable requirement;

(4) The replacement unit shall comply with all applicable requirements; and

(5) Within six (6) months after installing the replacement unit, the owner or operator shall:

(a) Reinstall the original unit; or

(b) Submit an application to permit the replacement unit as a permanent change.

Section 19. Compliance Certifications. (1) Sources whose permits contain a requirement for annual compliance certifications shall certify compliance with all terms and conditions in the permit using Form DEP7007CC:

(a) Sources with permits issued prior to December 31, 2000 shall submit their certification in 2001 on the permit anniversary, unless otherwise instructed by the local regional office.

(b) All sources (required to submit a certification) shall submit their certification in 2002 and each year thereafter on or before January 30, except that sources who submitted a certification after September 30, 2001, shall not be required to submit their next certification until January 30, 2003. [By January 30 of each year, sources subject to this administrative regulation shall submit to the cabinet an annual compliance certification for all applicable requirements.]

(2) The compliance certification shall contain the following information for each term or condition of the permit that is the basis for the certification:

(a) Identification of the term or condition;

(b) Compliance status;

(c) ~~Whether compliance was intermittent or continuous;~~

~~(d) The method used for determining compliance over the reporting period, and whether the method provided continuous intermittent data; and~~

~~(d) [(e)] The method currently used for determining compliance.~~

(3) Compliance certifications shall be mailed to the Division for Air Quality, Central Files, 803 Schenkel Lane, Frankfort, Kentucky 40601, and a copy sent to the appropriate Regional Office listed in Section 23 of this administrative regulation.

Section 20. Annual Emissions Certification for Specified Sources.

(1) An annual emissions certification shall be submitted to the cabinet for minor sources specified in Section 3(2) and (3) of this administrative regulation.

(2) During the first quarter of each calendar year, the cabinet shall survey these sources to determine their actual emissions during the preceding calendar year, and the source shall:

(a) Make the appropriate additions or corrections to the survey; and

(b) Return the updated survey to the cabinet within thirty (30) days of the date that the survey is mailed to the source [by the date indicated in the cover letter]. For this response:

1. Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation;

2. If no response is received by the deadline, the cabinet shall estimate the actual emissions based on prior history and other relevant information that is available; and

3. Failure of the cabinet to notify a source under this section shall not relieve the source from the obligation to submit an emissions statement.

Section 21. Certification by Responsible Official. A responsible official shall certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the following documents are true, accurate, and complete:

(1) Applications;

(2) Reports;

(3) Compliance certifications; and

(4) Emissions certifications.

Section 22. Emergency Provision. (1) An emergency shall be an affirmative defense to enforcement actions brought for noncompliance with a technology-based emission standard if:

(a) The source demonstrates that the incident meets the criteria for an emergency;

(b) The source took all reasonable steps to minimize the excess emissions; and

(c) The source notified the cabinet as quickly as possible and followed-up with a written report within two (2) working days after the emergency occurred.

(2) In an enforcement proceeding seeking to establish that an emergency occurred, the burden of proof shall rest with the source.

(3) This provision shall be in addition to any emergency or upset provision contained in an applicable requirement.

Section 23. Incorporation by Reference. (1) "Cabinet Provisions and Procedures for Issuing State-Origin Permits", June 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort,

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Kentucky, 40601, (502) 564-3358;

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material may also be obtained:

(a) By Email request to:

NREPC.DEPAirPermits@mail.state.ky.us; or

(b) On the internet at:

www.nr.state.ky.us/nrepc/dep/daq/prb.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, December 12, 2000)

401 KAR 52:050. Permit application forms.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 51, Part 70, 42 USC 7401 to 7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 51, Part 70, 42 USC 7401 to 7671q

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to **promulgate** [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the application forms used to permit air contaminant sources in Kentucky.

Section 1. Applicability. "Forms DEP7007A1 [1] to DD, Permit Application to Construct or Operate an Air Contaminant Source", shall be required to apply for a permit, permit revision, or permit renewal pursuant to 401 KAR 52:020, Section 4(1); 401 52:030, Section 4(1); or 401 KAR 52:040, Section 4(1), as applicable. "Forms DEP7007A1 [1] to DD, Permit Application to Construct or Operate an Air Contaminant Source", is incorporated by reference in Section 2 of this administrative regulation.

Section 2. Incorporation by Reference. (1) "Forms DEP7007A1 [1] to DD, Permit Application to Construct or Operate an Air Contaminant Source", June 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468; or

(3) This material is available:

(a) On request by contacting the Division for Air Quality, Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, Email:

NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787; or

(b) On the Internet at:

www.state.ky.us/nrepc/dep/daq/prb/daqapp.htm.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 27, 2000

FILED WITH LRC: June 27, 2000 at 3 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, December 12, 2000)

401 KAR 52:060. Acid rain permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 72 to 78, 42 USC 7651 to 7661(f)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 72 to 78, 42 USC 7651 to 7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to **promulgate** [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the federal acid rain provisions as codified at 40 CFR Parts 72 to 78.

Section 1. Applicability. This administrative regulation shall apply to affected sources and affected units under the Acid Rain Program, pursuant to 42 USC 7651 to 7651o. Applicability determination is set forth under 40 CFR 72.6.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR Part 72, "Permits Regulation", as published in the Code of Federal Regulations, 40 CFR Parts 72 to 80, July 1, 1999;

(b) 40 CFR Part 73, "Sulfur Dioxide Allowance System", as published in the Code of Federal Regulations, 40 CFR Parts 72 to 80, July 1, 1999;

(c) 40 CFR Part 74, "Sulfur Dioxide Opt-Ins", as published in the Code of Federal Regulations, 40 CFR Parts 72 to 80, July 1, 1999;

(d) 40 CFR Part 75, "Continuous Emission Monitoring", as published in the Code of Federal Regulations, 40 CFR Parts 72 to 80, July 1, 1999;

(e) 40 CFR Part 76, "Acid Rain Nitrogen Oxides Emission Reduction Program", as published in the Code of Federal Regulations, 40 CFR Parts 72 to 80, July 1, 1999, and as amended at 64 Fed. Reg. 55834, October 15, 1999;

(f) 40 CFR Part 77, "Excess Emissions", as published in the Code of Federal Regulations, 40 CFR Parts 72 to 80, July 1, 1999;

(g) 40 CFR Part 78, "Appeal Procedures for Acid Rain Program", as published in the Code of Federal Regulations, 40 CFR Parts 72 to 80, July 1, 1999;

(h) "Acid Rain Program Forms", U.S. EPA, January 2000; and

(i) "OTC NO_x Budget Program Forms", U.S. EPA, August 1999.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (606) 292-6411;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, PO Box 371954, Pittsburgh, PA 15250-7954, or on the internet at:

www.access.gpo.gov/nara.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 12, 2000)

401 KAR 52:070. Registration of designated sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to **promulgate** [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation **establishes the procedure** [provides] for the registration of designated air contaminant sources in Kentucky.

Section 1. Applicability. This administrative regulation shall apply to:

- (1) Sources that emit or have the potential to emit (PTE):
 - (a) Two (2) tpy or more but less than ten (10) tpy of a HAP;
 - (b) Five (5) tpy or more but less than twenty-five (25) tpy of combined HAPs; or
 - (c) For other regulated air pollutants:
 1. Ten (10) tpy or more but less than twenty-five (25) tpy of a pollutant subject to an applicable requirement that does not specify the method for achieving compliance;
 2. Ten (10) tpy or more but less than 100 tpy of a pollutant subject to an applicable requirement that clearly specifies the method of compliance; or
 3. Ten (10) tpy or more but less than 100 tons per year of a pollutant for which there is no applicable requirement; or
- (2) Sources that emit less than the cutoffs in subsection (1) of this section but are subject to an applicable requirement in 40 CFR Parts 60, 61, or 63.

Section 2. Exemptions. (1) The following sources shall be exempt from this administrative regulation:

(a) Sources that are required to be permitted under 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040;

(b) Sources that emit only nonprocess fugitive emissions;

(c) Sources subject only to the requirements of 40 CFR 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters;

(d) Sawmills that produce only rough-cut or dimensional lumber from logs and which have a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an applicable requirement in 40 CFR Part 60 or 401 KAR Chapters 59 or 61.

(2) The following activities shall be exempt from this administrative

regulation:

- (a) Vehicles used for the transportation of passengers or freight;
- (b) Publicly-owned roads;
- (c) Asbestos demolition or renovation operations subject only to an applicable requirement in 401 KAR Chapter 58;
- (d) Open burning covered under 401 KAR 63:005; and
- (e) Activities or emission units contained in the "List of Trivial Activities", which the cabinet shall maintain and make available:
 1. On request by calling the Division for Air Quality, Permit Support Section, at (502) 573-3382; and
 2. On the Internet at:
www.nr.state.ky.us/nrepc/dep/daq/prb/trivial.html.

Section 3. General Provisions. (1) Sources that are subject to this administrative regulation shall:

- (a) Register with the cabinet;
- (b) Comply with all applicable requirements; and
- (c) 1. Allow authorized representatives of the cabinet to enter the premises at all reasonable times:
 - a. To access and copy any records required by this administrative regulation;
 - b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and
 - c. To sample or monitor substances or parameters to determine compliance with applicable requirements.
2. Reasonable times shall be:
 - a. During all hours of operation;
 - b. During normal office hours; or
 - c. During an emergency.
- (2) Sources that are located in ozone nonattainment areas and emit or have the potential to emit twenty-five (25) tpy or more of VOC or NOx shall submit an annual emission certification as follows:
 - (a) During the first quarter of each calendar year, the cabinet shall survey these sources to determine their actual emissions during the preceding calendar year and the source shall:
 1. Make the appropriate additions or corrections to the survey;
 2. Return the updated survey to the cabinet within thirty (30) days of the date that the survey is mailed to the source [~~by the date indicated in the cover letter~~]. For this response:
 - a. Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation;
 - b. If no response is received by the deadline, the cabinet shall estimate the actual emissions based on prior history and other relevant information that is available; and
 - (b) Failure of the cabinet to notify a source under this subsection shall not relieve the source from the obligation to submit an emissions statement.
 - (3) The cabinet may require registered sources to demonstrate compliance with applicable requirements.

Section 4. When to Register. (1) New sources. Sources that commence construction after the effective date of this administrative regulation shall submit a registration form to the cabinet prior to commencing construction.

(a) A source may commence construction immediately upon submittal of a complete registration form.

(b) The cabinet shall review the registration form and shall notify the source within sixty (60) days of receipt that:

1. A permit or registration is not required;
2. The registration as submitted is accepted; or
3. The source is required to obtain a permit and is required to take the specified action.

(2) Existing registered sources. Sources that are registered with the cabinet and plan to reconstruct or modify shall comply with the following:

- (a) Sources that remain eligible for registration after the change:
 1. Shall submit a registration form to the cabinet prior to commencing reconstruction or modification; and
 2. May commence reconstruction or modification immediately upon submittal of the registration form.
- (b) Sources that are not eligible for registration after the change shall:

1. Submit an application under 401 KAR 52:020, 401 KAR 52:030, or 401 KAR 52:040 as applicable; and
2. Obtain the appropriate permit prior to commencing reconstruction or modification.

Section 5. Registration at the Cabinet's Request. (1) Upon request by the cabinet, a source that has commenced construction or operation without a permit or registration shall submit a registration form within thirty (30) days of request.

(2) The cabinet shall review the registration form and within sixty (60) days of receipt:

- (a) Shall notify the source that a permit or registration is not required; or
- (b) If a permit or registration is required, shall ~~issue a notice of violation and~~ specify the action the source is required to take, and may issue a notice of violation.

Section 6. Rescinding an Existing Permit. (1) A source that has a permit and is eligible for registration may request that the cabinet rescind its permit by submitting:

- (a) A complete registration form; and
 - (b) A letter requesting the cabinet to rescind the permit.
- (2) The cabinet shall review the request and shall notify the source within sixty (60) days of receipt that:
- (a) The request is approved and the permit has been rescinded; or
 - (b) The request is denied and shall specify the reason for denial and any action the source is required to take.

Section 7. How to Register. (1) Registration shall be made using:

- (a) Form DEP7039A, which is incorporated by reference in Section 8 of this administrative regulation; or
 - (b) Form DEP7105 for gasoline dispensing facilities which are subject to 401 KAR 59:174.
- (2) Forms DEP7039A and DEP7105 may be obtained by contacting the Kentucky Division for Air Quality, Emissions Inventory Section, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, FAX (502) 564-6543.
- (3) Completed registration forms shall be submitted to Kentucky Division for Air Quality, Attn: EIS Section, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Section 8. Incorporation by Reference. (1) "Form DEP7039A, Minor Source Registration", May 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

- (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;
- (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;
- (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;
- (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;
- (e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
- (f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;
- (g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and
- (h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 12, 2000)**

401 KAR 52:080. Regulatory limit on potential to emit.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7661 to 7661(f)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7661 to 7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to **promulgate** ~~[prescribe]~~ administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation allows sources whose actual emissions remain less than fifty (50) percent of the major source threshold to avoid the Title V permitting process.

Section 1. Applicability. (1) This administrative regulation shall apply to sources whose potential to emit (PTE) equals or exceeds a major source threshold for Title V and:

- (a) Whose actual emissions during any consecutive twelve (12) month period of operation after January 1, 1996, are less than fifty (50) percent of the major source thresholds for Title V;
 - (b) Who commenced construction on or before December 14, 1995; and
 - (c) Who do not have a Title V or conditional major permit.
- (2) For purposes of this administrative regulation, a covered source shall be a source whose application for coverage under this administrative regulation has been approved by the cabinet.

Section 2. General Provisions. (1) Covered sources shall not be required to obtain a Title V or conditional major permit, except as provided in:

- (a) Subsections (3) and (4) of this section; and
 - (b) Section 4(2) of this administrative regulation.
- (2) Covered sources shall:
- (a) Restrict actual emissions during each consecutive twelve (12) month period of operation after January 1, 1996, to less than fifty (50) percent of the major source thresholds for Title V;
 - (b) Comply with the applicable notification, recordkeeping, and reporting requirements of this administrative regulation;
 - (c) Allow authorized representatives of the cabinet to enter the premises where a source is located or where records are kept:
 1. During normal office hours;
 2. During all hours of operation; or
 3. During periods of emergency;
 - (d) Demonstrate compliance with applicable requirements if so requested by the cabinet;
 - (e) Obtain a state-origin permit if required to do so under 401 KAR 52:040; and
 - (f) Operate in compliance with all applicable requirements.

(3) If a covered source receives a notice of violation for noncompliance with any provision in subsection (2)(a) to (d) of this section:

(a) Within six (6) months after receiving the notice of violation, the source shall submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and

(b) Each incidence of noncompliance shall be a separate violation until a Title V or conditional major permit is issued to the source.

(4) If a covered source is required to obtain a Title V permit by the U.S. EPA, the source shall submit an application under 401 KAR 52:020 within twelve (12) months after publication of the final federal rulemaking.

(5) Sources that meet the applicability criteria for this administrative regulation may voluntarily apply for a Title V or conditional major permit.

Section 3. Notification Requirements. (1) To apply for coverage under this administrative regulation, sources shall contact the Division for Air Quality, Emissions Inventory Section, at (502) 573-3382 and

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

request coverage under this administrative regulation.

(a) If the source is already entered in the KyEIS, the division shall provide a printout of the source's current emissions data and a copy of "Form DEP7008A, Application For Coverage Under 401 KAR 52:080 For Sources Currently In The KyEIS", which is incorporated by reference in Section 12(1)(a) of this administrative regulation. The source shall:

1. Verify, correct, and supplement the emissions data as instructed in the form; and

2. Return the completed form with required attachments to the address indicated on the form.

(b) If the source is not in the KyEIS, the division will provide the source with a copy of "Form DEP7008B, Application For Coverage Under 401 KAR 52:080 For Sources Not Currently In The KyEIS", which is incorporated by reference in Section 12(1)(b) of this administrative regulation. The source shall:

1. Provide source information and emissions data as specified in the instructions to the form; and

2. Return the completed form with any required attachments to the address indicated on the form.

(2) The cabinet shall review the completed form and attachments and shall notify the source within sixty (60) days after receipt that the source:

(a) Is approved for coverage, or

(b) Is not approved for coverage. If the source is not approved for coverage, the cabinet shall explain the reason why and specify the action the source is required to take.

Section 4. Reconstruction or Modification. Prior to making a change, a covered source that plans to reconstruct or modify shall comply with this section.

(1) If the source plans to make a change that will not cause its actual emissions during a consecutive twelve (12) month period of operation to be fifty (50) percent or more of a major source threshold for Title V:

(a) The source shall:

1. Contact the Division for Air Quality, Emissions Inventory Section, at (502) 573-3382 and request a copy of Form DEP7008A; and

2. Return the completed form with any required attachments to the address indicated on the form.

(b) The source may make the change immediately upon submittal of Form DEP7008A with any required attachments.

(c) The cabinet shall review the completed form and attachments and shall notify the source within sixty (60) days after receipt that the source:

1. Continues to be approved for coverage; or

2. Is no longer approved for coverage. If the source is no longer approved for coverage, the cabinet shall explain the reason why and specify the action the source is required take.

(2) If the source plans to make a change that will cause its actual emissions during any consecutive twelve (12) month period of operation to be fifty (50) percent or more of a major source threshold for Title V, the source shall:

(a) Contact the Division for Air Quality, Permit Support Section, at phone (502) 573-3382 or fax (502) 573-3787 and inform the division of its intent;

(b) Submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and

(c) Comply with the requirements of this administrative regulation until the source is issued a Title V or conditional major permit.

Section 5. General Recordkeeping Requirements. (1) Covered sources shall maintain records as specified in this section and in the applicable provisions of Sections 6 to 10 of this administrative regulation.

(2) Records shall be sufficient to determine actual emissions for each emission unit and shall be:

(a) Maintained for a period of five (5) years from date of the last entry; and

(b) Made available on request for inspection by the cabinet or the U.S. EPA.

(3) If groups of similar units are connected in series, records may be kept for the group rather than each unit.

(4) Records shall:

(a) Be summarized each month and added to the previous eleven (11) months to provide a total of actual emissions for each consecutive twelve (12) month period; and

(b) Demonstrate that the source's actual emissions during each consecutive twelve (12) month period are less than fifty (50) percent of the major source thresholds; and

(c) Contain additional information which the cabinet may request.

Section 6. Recordkeeping for Sources that Use Coatings, Solvents, Inks, or Adhesives. These sources shall maintain the following records:

(1)(a) A current list of all coatings, solvents, inks, and adhesives in use, with the following information for each:

1. Manufacturer and brand;

2. Product name or CAS number;

3. VOC content in grams per liter or pounds per gallon; and

4. HAPs content in grams per liter or pounds per gallon.

(b) In lieu of the records required in paragraph (a) of this subsection, a source may substitute the following:

1. Manufacturer's product specifications;

2. Material VOC content reports; or

3. Laboratory analyses that provide the same information;

(2) A description of all equipment used during and after coating or solvent application, including:

(a) Type;

(b) Make and model;

(c) Maximum design process rate or throughput;

(d) Type and description of control devices; and

(e) Description of application and drying methods used;

(3) A monthly log of the amount of each coating, solvent, ink, and adhesive used, including solvents used for purging, clean-up, and surface preparation;

(4) All purchase orders, invoices, and other documents that support the information in the monthly log; and

(5) Additional information which the cabinet may request.

Section 7. Recordkeeping for Sources that Use Organic Liquid Storage Units. These sources shall maintain the following records:

(1) A monthly log identifying the name and amount of liquid stored and used; and

(2) Information on the tank design and specifications, including control equipment.

Section 8. Recordkeeping for Sources that Have Combustion Emissions. These sources shall maintain the following equipment and fuel usage records:

(1) Description of equipment type, make, and model;

(2) Maximum design rate for both process and control device, or maximum power input and output;

(3) Minimum operating temperature and residence time of thermal oxidizers;

(4) All source test information;

(5) Control device efficiency, obtained from manufacturer's specifications or stack test;

(6) A monthly log of hours of operation, fuel type and usage, fuel heating value, percent nitrogen for coal, and percent sulfur for fuel oil and coal. For nonfossil fuels, heating value shall be expressed in BTU/pound or BTU/gallon; and

(7) Additional information which the cabinet may request.

Section 9. Emission Control Unit. Sources having emission control units [Recordkeeping for Sources that Use Noncombustion Emission Control Devices. These sources] shall maintain the following records:

(1) Information on equipment type and description, make and model, and identification of emission units served by each control device;

(2) Information on equipment design, including the following as applicable:

(a) Pollutants controlled;

(b) Control device efficiency for each pollutant, taken from manufacturer's specifications or stack test;

(c) Maximum design or rated capacity for both process and control

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

device;

- (d) Inlet and outlet temperatures;
 - (e) Concentrations of each controlled pollutant;
 - (f) Catalyst data, including type, material, life, volume, space velocity, and ammonia injection rate and temperature;
 - (g) Baghouse data, including design cleaning method, fabric material, flow rate, and air-to-cloth ratio;
 - (h) Electrostatic precipitator data, including number of fields, cleaning method, and power input;
 - (i) Scrubber data, including type, design, sorbent type, pressure drop; liquid and gas flow rates, and PH;
 - (j) Other design data if appropriate; and
 - (k) All source test information;
- (3) A monthly log of hours of operation, including notes on:
- (a) Control equipment breakdowns;
 - (b) Upsets;
 - (c) Repairs;
 - (d) Maintenance; and
 - (e) Other deviations from design parameters; and
- (4) Additional information which the cabinet may request.

Section 10. Recordkeeping for Sources Not Described in Sections 6 to 8 [9] of this Administrative Regulation. These sources shall maintain the following records:

- (1) Information describing the process and equipment including:
 - (a) Equipment type and description;
 - (b) Make and model;
 - (c) Maximum design process rate or throughput; and
 - (d) Type and description of control devices including flow rates, temperature, and control device efficiency for each pollutant.
- (2) A monthly log of the following:
 - (a) Hours of operation;
 - (b) Amount and description of each raw material used;
 - (c) Amount and production rate of each product produced;
 - (d) Purchase orders, invoices, and other documents that support the monthly log; and
 - (e) Additional information which the cabinet may request.

Section 11. Reporting Requirements. At the beginning of each calendar year, the cabinet shall mail a printout of the latest emission inventory data in the KyEIS to each covered source. On receiving the printout the source shall:

- (1) Update the emissions information;
- (2) Certify the report as true and accurate; and
- (3) Return the report to the cabinet within thirty (30) days from the date that the printout is mailed to the source ~~[on or before the date indicated in the cover letter]~~.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Form DEP7008A, Application for Coverage Under 401 KAR 52:080 for Sources Currently In The KyEIS;" and
 - (b) "Form DEP7008B, Application for Coverage Under 401 KAR 52:080 for Sources Not Currently In The KyEIS."
- (2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
- (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;
 - (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;
 - (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (270) 746-7475;
 - (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky, 41042, (859) 292-6411;
 - (e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;
 - (f) London Regional Office, 875 S. Main Street, London, Kentucky, 40741, (606) 878-0157;
 - (g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (270) 687-7304;
 - (h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (270) 898-8468; and

(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, December 12, 2000)

401 KAR 52:090. Prohibitory rule for hot mix asphalt plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate ~~[prescribe]~~ administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation sets production limits for hot mix asphalt plants, which keeps their emissions below the major source threshold and avoids the necessity of having to obtain a Title V or conditional major permit.

Section 1. Applicability. (1) This administrative regulation shall apply to hot mix asphalt plants:

- (a) Whose potential to emit (PTE) equals or exceeds a major source threshold for Title V;
 - (b) Who have not been issued a Title V or conditional major permit; and
 - (c) Who operate in compliance with:
 - 1. 401 KAR 59:010 or 401 KAR 61:020 as applicable; and
 - 2. The operational limits, fuel restrictions, and recordkeeping and reporting requirements of this administrative regulation.
- (2) Hot mix asphalt ~~[mix]~~ plants shall be treated as separate sources unless:
- (a) Two (2) or more plants are located on one (1) or more contiguous or adjacent properties; and
 - (b) The plants are under common control of the same person or persons under common control.
- (3) For purposes of this administrative regulation, a covered source shall be a hot mix asphalt plant that chooses to comply with this administrative regulation in lieu of obtaining a Title V or conditional major permit.

Section 2. General Provisions. (1) Covered sources shall not be required to obtain Title V or conditional major permits, except as provided in:

- (a) Subsections (3) and (4) of this section; and
 - (b) Section 4 of this administrative regulation.
- (2) Covered sources shall:
- (a) Comply with the operation limits, fuel restrictions, and the notification, recordkeeping, and reporting requirements of this administrative regulation;
 - (b) Allow authorized representatives of the cabinet to enter the premises where the source is located or where records are kept:
 - 1. During normal office hours;
 - 2. During all hours of operation; or
 - 3. During periods of emergency;
 - (c) Demonstrate compliance with applicable requirements if so requested by the cabinet;
 - (d) Obtain a state-origin permit if required to do so under 401 KAR 52:040; and
 - (e) Operate in compliance with all applicable requirements.
- (3) If a covered source receives a notice of violation for noncompliance with any provision in subsection (2)(a) to (c) of this section:
- (a) Within six (6) months after receiving the notice of violation, the

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

source shall submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and

(b) Each incidence of noncompliance shall be a separate violation until a Title V or conditional major permit is issued to the source.

(4) If a covered source is required to obtain a Title V permit by the U.S. EPA, the source shall submit an application under 401 KAR 52:020 within twelve (12) months after publication of the final federal rulemaking.

(5) Sources that meet the applicability criteria for this administrative regulation may voluntarily apply for a Title V or conditional major permit.

Section 3. Operation Limits and Fuel Restrictions. Covered sources shall meet the requirements of this section.

(1) Operational limits.

(a) Batch mix plants shall not produce more than 360,000 tons of asphalt during any consecutive twelve (12) month period.

(b) Drum mix plants shall not produce more than 500,000 tons of asphalt during any consecutive twelve (12) month period.

(2) Fuel restrictions. Waste oil shall not be used as fuel in the production of asphalt unless the oil has been recycled. Recycled oil:

(a) Shall not contain more than:

1. Five (5) ppm of arsenic;

2. Two (2) ppm of cadmium;

3. Ten (10) ppm of chromium;

4. 100 ppm of lead; or

5. 1000 ppm of total halogens; and

(b) Shall have a minimum flash point of 100°F.

Section 4. Reconstruction or Modification. Prior to making a change that will cause the source to be unable to comply with this administrative regulation, a covered source shall:

(1) Notify the cabinet by contacting the Division for Air Quality, Permit Support Section, at (502) 573-3382;

(2) Submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and

(3) Comply with the requirements of this administrative regulation until the source is issued a Title V or conditional major permit.

Section 5. Recordkeeping Requirements. Covered sources shall maintain records as specified in this section.

(1) Logs shall be kept that show:

(a) The tons of asphalt produced for each month;

(b) The tons of asphalt produced for each consecutive twelve (12) month period, computed by adding each month's production to the total production for the previous eleven (11) months; and

(c) The type and amount of fuels used each month, as follows:

1. Gaseous fuels usage, expressed in cubic feet or gallons and identified as natural gas (NAT), liquid propane gas (LPG), or liquid butane gas (LBG);

2. Fuel oil usage, expressed in gallons and identified by number (i.e., #2, #4, etc.); and

3. Additional information which the cabinet may request.

(2) Material Safety Data Sheets (MSDS) shall be maintained with the fuel usage log for all fuel oils purchased and used.

(3) The records shall be sufficient to determine actual emissions for each emission unit and shall be:

(a) Maintained on site for five (5) years from date of last entry in the log; and

(b) Made available on request for inspection by the cabinet or the U.S. EPA.

Section 6. Reporting Requirements. At the beginning of each calendar year, the cabinet shall mail a printout of the latest emission inventory data in the KyEIS to each covered source. On receiving the printout the source shall:

(1) Update the emissions information;

(2) Certify the report; and

(3) Return the report to the cabinet within thirty (30) days from the date that the printout is mailed to the source [on or before the date indicated in the cover letter].

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 12, 2000)

401 KAR 52:100. Public, affected state, and U.S. EPA review.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Part 51, Part 70, 42 USC 7410, 7661 to 7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 51, 70, 42 USC 7410, 7661 to 7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes [contains] the procedures used by the cabinet to provide for the review of federally-enforceable permits by the public, affected states, and the U.S. EPA.

Section 1. Applicability. This administrative regulation shall apply to the permit actions specified in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

Section 2. Public Comment Period. (1) For permit actions that require public review, the cabinet shall:

(a) Provide a minimum of thirty (30) days for public comment; and

(b) Prepare a response to the comments received during the comment period.

(2) The comment period:

(a) Shall begin on the date the public notice is published in the newspaper; and

(b) Shall end thirty (30) days after the publication date.

(3) The cabinet shall consider:

(a) All written comments received during the public comment period;

(b) Comments received in alternate format to accommodate persons with disabilities; and

(c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(4) The cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or

(b) The permit action is of significant interest to the public.

(2) A request for a hearing shall not require an extension of the comment period; however, the cabinet may allow additional time after the close of a public hearing for public hearing participants to submit their comments in writing.

(3) If a public hearing is held, the cabinet shall:

(a) Provide public notice, at least thirty (30) days prior to the scheduled hearing date; and

(b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the hearing.

(4) Any person may submit statements or data during the hearing concerning the permit action.

(5) The cabinet may:

(a) Set reasonable limits on the time allowed for oral statements; and

(b) Require that statements be submitted in writing.

(6) The cabinet shall:

(a) Consider all comments received at the public hearing, includ-

ing comments received in alternate format to accommodate persons with disabilities;

(b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and

- (c) Make available to the public at a reasonable reproduction cost;
1. A tape recording or written transcript of the hearing; and
 2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice. (1) The cabinet shall provide public notice of a comment period and any scheduled public hearing by prominent publication in the newspaper having the largest general circulation in the area where a facility is applying for a permit.

(2) The newspaper publication may be a paid advertisement, legal notice, or other appropriate format as determined by the cabinet.

(3) The cabinet may provide additional notice to the public through other methods, including newsletters and press releases.

Section 5. Information Included in Public Notice. The public notice shall include the following information:

(1) Contact name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(2) Name and address of the permit applicant and, if different, the name and address of the facility;

(3) A brief description of the business conducted at the facility and the activity involved in the permit action;

(4) A brief description of the comment procedures, including how to request a hearing;

(5) Date, time, and place of the hearing, if one (1) has been scheduled;

(6) The end date of the public comment period;

(7) The end date of the U.S. EPA's review period;

(8) Reference to the dates of previous public notices relating to the permit;

(9) Description of any emission change involved in a permit revision;

(10) For permits subject to review under 401 KAR 51:017 [50:017], the degree of increment consumption expected to occur; and

(11) Name, address, and telephone number where interested persons may obtain the following information:

(a) Copies of the draft permit or permit revision;

(b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential information; and

(c) Other materials available to the cabinet that are relevant to the permit decision.

Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as specified in this section.

(1) For permit actions that are subject to review under 401 KAR 51:017 or 51:052, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA through the appropriate regional office;

(c) Affected states;

(d) All persons on the mailing list specified in Section 7 of this administrative regulation; and

(e) The officials and agencies having authority over the area where the source will be located, as follows:

1. Local air pollution control agencies;

2. The chief executive of the city and county;

3. Any comprehensive regional land use planning agency; and

4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source.

(2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA through the appropriate regional office;

(c) Affected states; and

(d) All persons on the mailing list specified in Section 7 of this

administrative regulation.

(3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA through the appropriate regional office; and

(c) All persons on the mailing list specified in Section 7 of this administrative regulation.

Section 7. Mailing List. (1) The cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.

(2) The cabinet may:

(a) Notify the public of the opportunity to be on the list through periodic publication in the public press, state-funded publications, or state law journals; and

(b) Delete from the list persons who fail to show continued interest in receiving notice.

Section 8. Public Inspection of Documents. (1) During the public comment period, the cabinet shall make available for public inspection all information, except that which is confidential, contained in the:

(a) Permit application;

(b) Draft permit; and

(c) Supporting materials.

(2) The information shall be made available at:

(a) The main office of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601;

(b) The Regional Office of the Division for Air Quality having jurisdiction over the source; and

(c) The local public library or office of the county clerk in the county or counties where the source is located.

(3) For general permits, the information specified in subsection (1) of this section shall be made available in at least one (1) location of the cabinet's discretion.

Section 9. Affected States Review. Except as provided in subsection (3) of this section, for permit actions that require affected state review the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public.

(1) The cabinet may accept a recommendation made by an affected state if the recommendation:

(a) Is received during the comment period specified in Section 2 of this administrative regulation;

(b) Is applicable to the permit action; and

(c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 to 65.

(2) If the cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:

(a) Gives the reason for not accepting the recommendation; and

(b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.

(3) For a minor permit revision at a major source, the cabinet:

(a) Shall provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and

(b) After submittal of a proposed minor permit revision to the U.S. EPA, the cabinet:

1. Shall notify the affected state and the U.S. EPA if a recommendation is not accepted; and

2. Shall provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

(a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or

(b) Waives its right of review.

(2) The cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

statement to the U.S. EPA and to any other person who requests it.

(3) The cabinet shall provide the U.S. EPA with copies of the:

- (a) Permit application, including attachments;
- (b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;
- (c) Proposed permit or permit revision; and
- (d) Final permit or permit revision.

(4) [(3)] On a case-by-case basis and with prior U.S. EPA approval, the cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.

(5) [(4)] On a case-by-case basis and with prior U.S. EPA approval, the cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

(a) The cabinet shall provide the U.S. EPA with:

1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and

2. All timely submitted public comments after the close of the comment period;

(b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:

1. A substantial change is made in the permit or permit revision following the public comment period; or

2. The U.S. EPA files an objection to the permit or permit revision.

(c) If a substantial change is made in the draft permit or permit revision, the cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.

(6) [(5)] If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:

(a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;

(b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and

(c) Provide the permit applicant with a copy of the filed objection.

(7) [(6)] After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.

(8) [(7)] If the cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA may issue or deny the permit.

(9) [(8)] If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.

(a) The U.S. EPA shall file the citizen objection if the petition is:

1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and

2. Based only on objections raised with reasonable specificity during the public comment period, unless:

a. The petitioner can demonstrate that it was impractical to raise the objection within the comment period, or

b. The grounds for objection arose after the end of the comment period.

(b) If the U.S. EPA objects to a permit action as a result of a petition filed, the cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection [If the U.S. EPA files the objection, the cabinet shall not issue a final permit or permit revision until the objection has been resolved].

(c) If the cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1. The U.S. EPA may modify, terminate, or revoke the permit consistent with the procedures in 40 CFR 70.7(g)(4) and (5);

2. The cabinet shall then issue a revised permit that satisfies the U.S. EPA objection; and

3. The source shall not be in violation for failing to submit a complete and timely application [after the U.S. EPA's forty-five (45) day review period and before the U.S. EPA files an objection, the petition for review shall not stay the effectiveness of the permit or its requirements].

(10) [(9)] To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

(11) [(10)] The cabinet shall keep records of all information submitted to the U.S. EPA for a period of five (5) years.

(12) [(11)](a) If the cabinet is authorized by the source to submit confidential information to the U.S. EPA, a claim of confidentiality shall accompany the relevant information.

(b) If the cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confidentiality.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at 11 a.m.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (As Amended at ARRS, December 12, 2000)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky Correctional Institution for Women.

Section 1. Incorporation by Reference. (1)(a) Kentucky Correctional Institution for Women policies and procedures, September 13 [April 14], 2000 are incorporated by reference.

(b) This material [(t)] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40601-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Kentucky Correctional Institution for Women Policies and Procedures include:

| | |
|---------------|--|
| KCIW 01-08-01 | News Media Access |
| KCIW 02-01-01 | Comprehensive Insurance Coverage |
| KCIW 02-02-01 | Fiscal Management: Audits |
| KCIW 02-02-04 | Institution Purchasing Procedures |
| KCIW 02-03-01 | Inventory Control of Nonexpendable Personal Property |
| KCIW 02-03-02 | Inventory and Control of Stores |
| KCIW 02-04-01 | Accounting Procedures |
| KCIW 02-05-01 | Inmate Canteen and Staff Canteen [(Amended 4/14/00)] |
| KCIW 03-01-01 | Expense reimbursement (Added 9/13/00) |
| KCIW 03-02-01 | General Guidelines for Staff (Added 9/13/00) |
| KCIW 03-02-02 | Inclement Weather and Emergency Conditions (Added 9/13/00) |
| KCIW 03-03-01 | Employee Grievance Procedure (Added 9/13/00) |
| KCIW 03-05-01 | Employee Personnel File (Added 9/13/00) |
| KCIW 03-09-01 | Payroll Personnel Manning (Added 9/13/00) |
| KCIW 03-10-01 | Job Announcements (Added 9/13/00) |
| KCIW 03-11-01 | Merit Registers (Added 9/13/00) |
| KCIW 03-13-01 | Kentucky Employee Assistance Program (Added 9/13/00) |
| KCIW 06-01-01 | Inmate Records |
| KCIW 06-01-02 | Transfers to Community Centers and the Minimum |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

KCIW 06-01-03 Security Unit
 KCIW 10-01-01 Storage of Expunged Records
 KCIW 10-01-01 Special Management Unit General Operations and Regulations [(Amended 4/14/00)]
 KCIW 10-01-02 Special Management Unit Programs, Placement and Review
 KCIW 10-01-04 Special Security
 KCIW 11-01-01 Food Service Operation Inspections
 KCIW 11-01-02 Budgeting, Accounting, and Purchasing Procedures for Food Products
 KCIW 11-02-01 Menu Preparation/Special Diets
 KCIW 11-03-01 General Guidelines for Food Service Workers
 KCIW 11-04-01 Health Regulations and General Guidelines for the Food Service Area
 KCIW 11-07-01 Special Religious Diets
 KCIW 12-01-01 Control of Pests and Vermin
 KCIW 12-02-01 Laundry and Clothing Issuance
 KCIW 12-02-03 Donated Items
 KCIW 12-04-02 Hair Care Services
 KCIW 13-01-01 Provision of Medical and Dental Care
 KCIW 13-01-02 Preliminary Health Screening and Appraisal
 KCIW 13-01-03 Use of Pharmaceutical Products
 KCIW 13-03-01 Emergency Care
 KCIW 13-03-02 Infirmary Care and Outside Services
 KCIW 13-04-01 Medical Alert System
 KCIW 13-04-02 Psychiatric/Psychological Services
 KCIW 13-06-01 Informed Consent
 KCIW 13-07-01 Detoxification and Alcohol or Chemical Dependency Guidelines
 KCIW 13-08-01 Medical Examination for Employees
 KCIW 13-09-01 Suicide Prevention and Intervention Program
 KCIW 13-11-01 Infection Control
 KCIW 14-01-02 Inmate Rights
 KCIW 14-02-01 Access to Attorneys and Designated Counsel Substitutes
 KCIW 14-04-01 Inmate Grievance Procedure
 KCIW 15-06-01 Restriction Guidelines
 KCIW 16-01-01 Inmate Correspondence [(Amended 4/14/00)]
 KCIW 16-02-01 Inmate Access to Telephones [(Amended 4/14/00)]
 KCIW 16-03-01 Inmate Visiting Regulations [(Amended 4/14/00)]
 KCIW 16-03-02 Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
 KCIW 16-04-01 Inmate Indigent and Low Income Fund [(Amended 4/14/00)]
 KCIW 16-05-01 Inmate Packages [(Amended 4/14/00)]
 KCIW 17-01-01 Assessment Center Operation and Reception Programs
 KCIW 17-01-02 Assessment/Classification Center Operations, Rules and Regulations
 KCIW 17-01-03 Assessment and Classification Unit Property Guidelines
 KCIW 17-02-01 Identification Department Admissions
 KCIW 17-05-01 Inmate Personal Property Guidelines
 KCIW 18-01-02 Institutional Housing Assignments
 KCIW 18-01-03 Honor Program
 KCIW 18-02-01 Classification Procedures
 KCIW 18-05-01 Special Needs Inmates
 KCIW 18-06-01 Institutional Status Codes
 KCIW 19-01-01 Inmate Work/Program Assignments
 KCIW 19-03-01 Landscape and Maintenance Work Details
 KCIW 20-01-01 Education Programs
 KCIW 20-01-03 Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
 KCIW 20-01-04 Entry - Exit Vocational School
 KCIW 20-01-05 Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
 KCIW 20-01-06 Vocational Education: Staffing Patterns/Requirements
 KCIW 20-01-07 Vocational Counselor
 KCIW 20-01-08 Vocational Education: Community Resources and the Integration with Academic Progress
 KCIW 20-01-09 Vocational Education: Support Equipment

KCIW 20-01-10 Control of Flammable, Hazardous, Toxic and Causative Materials in the Vocational Area
 KCIW 22-01-04 Inmate Club Activities
 KCIW 23-01-01 Religious Services
 KCIW 25-02-02 Furloughs
 KCIW 25-03-01 Escorted Community Leave

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: September 12, 2000

FILED WITH LRC: September 13, 2000 at 8 a.m.

EDUCATION, ARTS, AND HUMANITIES Kentucky Board of Education Department of Education Office of District Support Services (As Amended at ARRS, December 12, 2000)

702 KAR 1:150. Employment of retired teachers in critical shortage areas.

RELATES TO: KRS 156.106, 161.605[-, 2000-GA-HB-519]

STATUTORY AUTHORITY: KRS 156.070, 156.106 [2000-GA-HB 519]

NECESSITY, FUNCTION, AND CONFORMITY: 2000 GA HB 519 requires the Kentucky Board of Education to promulgate an administrative regulation to establish procedures to be used to appoint retired teachers and administrators to positions in critical shortage areas. This administrative regulation establishes the procedures for local school districts to follow to enable the appointment of retired teachers and administrators to positions in critical shortage areas.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. To establish the need for employing a retired teacher or administrator in a critical shortage area as identified by the Commissioner of Education, a school district superintendent shall submit a written statement to the Department of Education confirming the following:

- (1) The superintendent has made every reasonable effort to recruit an active teacher or administrator for the position on an annual basis;
- (2) No qualified teacher or administrator has applied for the vacant position, or to the superintendent's knowledge, a qualified teacher or administrator is not available for the position;
- (3) The vacancy has been advertised locally, regionally, and statewide by appropriate means;
- (4) The school district has been unsuccessful in recruiting a qualified teacher or administrator for the vacant position from the listings of teachers and administrators supplied by the placement services of the teacher education institutions, the Kentucky Department of Education, and other professional organizations;
- (5) The local school district has complied with criminal records check required by KRS 160.380 as to the applicant whom the school district intends to hire into the vacant position.

Section 3. (1) A request to appoint a retired teacher or administrator in a position in a critical shortage area shall be submitted to the Department of Education no earlier than June 1 of each year, and it shall include a specific plan for continuing to recruit an active teacher or administrator for the position.

(2) If the statewide quota for the hiring of teachers and administrators in critical shortage areas has not been met, after September 15 of each school year a local school district superintendent may request approval from the Department of Education for the school district to exceed its quota of retired teachers and administrators as employees.

GENE WILHOIT, Commissioner of Education

HELEN MOUNTJOY, Chairperson

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

APPROVED BY AGENCY: October 5, 2000
FILED WITH LRC: October 6, 2000 at 10 a.m.

EDUCATION PROFESSIONAL STANDARDS BOARD (As Amended at ARRS, December 12, 2000)

704 KAR 20:120. Emergency certification and out-of-field teaching.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030, 161.100, 161.1211, 161.1221 [~~2000 Ky. Acts ch. 527~~]

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.100, 161.1221(1) [~~2000 Ky. Acts ch. 527, sec. 6~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.100 authorizes the Education Professional Standards Board to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the Education Professional Standards Board to establish a definition for out-of-field teaching. This administrative regulation establishes the qualifications and procedures for emergency certifications and establishes the definition for out-of-field teaching. [KRS 161.100 provides for the employment of school personnel in the event that fully qualified teachers are not available for specific positions. This administrative regulation establishes the qualifications and procedures by which the local boards of education and the Education Professional Standards Board may comply with the statute.]

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. (1) In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Education Professional Standards Board on Form TC-4F (request forms supplied by the Office of Teacher Education and Certification):

(a) No qualified teachers have applied for the vacant position and to our knowledge qualified teachers are not available for the position; [-]

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means; [-]

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions; [-]

(d) The position will be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession; and [-]

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2)(a) The Education Professional Standards Board, depending upon the assessment of need for the position and the availability or anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers.

1. The term of validity of an emergency certificate may be limited to a period less than the full school year.

2. [-] The beginning date shall be no earlier than the date the request form is received by the Education Professional Standards Board (in the Department of Education).

(b) The issuance of an emergency certificate for a full-time assignment for each subsequent year shall require completion of six (6) hours of credit from the preparation program leading to the required certification for the position.

(3) Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, including

[such as] IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

(a) The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services of the Kentucky Department of Education; [-]

(b) The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services of the Kentucky Department of Education. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children; and [-]

(c) The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services.

(4)(a) The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers. Emergency certificates for substitute teaching may then be issued by the local school district subject to the priority schedule for the employment of substitute teachers as established by 704 KAR 20:210.

(b) Each local school district shall report by June 30 of each year the number of days of substitute teaching performed by each emergency teacher.

(5) The Education Professional Standards Board [Office of Teacher Education and Certification] shall periodically review [report to the Education Professional Standards Board] the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

(6)(a) An emergency certificate for full-time or part-time employment shall be issued only to individuals who have attained a bachelor's degree from a regionally accredited college including a minimum grade point average of 2.5 on a 4.0 scale. An emergency certificate for full-time or part-time employment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 704 KAR 20:690.

(b) An emergency certificate for substitute teaching shall be issued to individuals who have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution including a minimum grade point average of 2.5 on a 4.0 scale. An emergency certificate for substitute teaching issued for the 1992-93 school year may be reissued for 1993-94 and for succeeding consecutive years.

(c) An emergency certificate for substitute teaching in any health, technical, or industrial occupation may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing [an acceptable] score on the General Education Development Test.

(7)(a) A Form TC-4F [An application form] signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

(b) An emergency certificate for substitute teaching shall not require application to the Education Professional Standards Board. Local school districts shall issue emergency certificates for substitute teaching pursuant to the requirements of this administrative regulation and other pertinent Kentucky statutes and administrative regulations regarding school personnel.

Section 3. Rank and Salary Provisions. (1) Beginning July 14, 2000, the Education Professional Standards Board shall issue the emergency certificate for full-time or part-time employment established in Section 2 of this administrative regulation with a rank designation based upon the following criteria:

(a) A teacher holding a valid Kentucky teaching certificate shall be

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

issued an emergency certificate for full-time or part-time employment at the rank designated on the teacher's [his/her] regular certificate.

(b)1. A new teacher holding a valid one (1) year provisional certificate issued upon enrollment in the Kentucky Teacher Internship Program established in 704 KAR 20:690 shall be issued an emergency certificate for part-time employment at the rank designated on the teacher's [his/her] one (1) year provisional certificate.

2. The teacher shall maintain a half-time enrollment in the internship as defined in 704 KAR 20:690 to remain eligible for the higher rank established in this paragraph.

3. If the teacher terminates or otherwise fails to continue [his/her] enrollment in the internship prior to its successful completion, the teacher [then he/she] shall be reclassified at Rank IV until the teacher [such time as he/she] is properly reenrolled in the internship program.

(c) A new teacher holding a valid Kentucky Statement of Eligibility shall be issued an emergency certificate for full-time or part-time employment at Rank IV until the teacher [such time as he/she] is properly enrolled in the Kentucky Teacher Internship Program on at least a half-time basis as established in 704 KAR 20:690 and possesses the one (1) year provisional certificate referenced in paragraph (b)1 of this subsection.

(d) An applicant for the emergency certificate for full-time or part-time employment who does not hold a valid Kentucky teaching certificate shall be issued the emergency certificate at Rank IV.

(2) Local school districts issuing the emergency certificate for substitute teaching established in Section 2 of this administrative regulation shall adhere to the Rank classifications established in KRS 161.1211 [set forth in 2000 Ky. Acts ch. 527, sec. 7].

[(3) Local school districts shall use the rank designations delineated in this administrative regulation for establishing minimum salary pursuant to pertinent Kentucky laws and Kentucky Board of Education administrative regulations governing the compensation of professional school personnel.]

Section 4. Out-of-field Teaching. (1) Pursuant to KRS 161.1221(1), out-of-field teaching shall be classified in the following four (4) categories:

(a) The number of emergency certificates issued by grade range, subject field, and district;

(b) The number of probationary certificates issued by grade range, subject field, and district;

(c) The number of temporary provisional certificates issued by grade range, subject field, and district; and

(d) The number of teachers who do not possess a certificate of legal qualifications for the professional position they hold in the public schools, including a breakout of:

1. The number of teachers who hold no certificate;

2. The number of teachers who hold an expired certificate;

3. The number of certified teachers who are teaching outside of the subject field or fields indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection; and

4. The number of certified teachers who are teaching outside the grade range indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection.

(2) If data is available, reports on out-of-field teaching in the four categories established in subsection (1) of this section shall differentiate between teachers who possess the equivalent of a college major, minor or area of concentration in the subject area they are teaching. [A teacher shall be considered to be teaching "out-of-field" if he/she does not possess a certificate of legal qualifications for that position pursuant to KRS 161.020 or 161.100.

(2) A teacher issued an emergency certificate under this administrative regulation shall not be considered teaching "out-of-field".]

Section 5. Incorporation by Reference. (1) Form TC-4F, revised 6/2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair

APPROVED BY AGENCY: September 15, 2000

FILED WITH LRC: September 15, 2000 at 9 a.m.

CABINET FOR WORKFORCE DEVELOPMENT
Office of Training and Reemployment
(As Amended at ARRS, December 12, 2000)

790 KAR 1:020. 1999-2004 Strategic Five (5) Year State Workforce Investment Plan.

RELATES TO: KRS 151B.020(6), 151B.260, 29 USC 2822, EO 99-1722, [SB-202] 2000 Ky. Acts ch. 202

STATUTORY AUTHORITY: KRS 151B.020(6), 151B.260, EO 99-1722, [SB-202] 2000 Ky. Acts ch. 202

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.020(6) **requires** [authorizes] the Secretary of the Cabinet for Workforce Development to promulgate administrative regulations that are necessary to implement programs mandated by federal law. EO 99-1722 (ratified by [SB-202] 2000 Ky. Acts ch. 202) designates the Office of Training and Reemployment as the administrator of Title I of the Workforce Investment Act of 1998, 29 USC 2801, et seq. 29 USC 2822 requires the Commonwealth to submit a state plan for approval by the United States Department of Labor. The 1999-2004 Strategic Five (5) Year State Workforce Investment Plan is necessary to be eligible to receive federal funds under the Workforce Investment Act of 1998. [-and] This administrative regulation formally adopts the [such] plan developed and approved by the Kentucky Workforce Investment Board and the U.S. Department of Labor.

Section 1. Under the authority vested in the Office of Training and Reemployment, the 1999-2004 Strategic Five (5) Year State Workforce Investment Plan has been prepared and submitted for approval by the Kentucky Workforce Investment Board and the U.S. Secretary of Labor. The U.S. Secretary of Labor approved the plan on April 12, 2000.

Section 2. (1) The 1999-2004 Strategic Five (5) Year State Workforce Investment Plan, revised 2/22/2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Training and Reemployment, 209 St. Clair Street, Frankfort, Kentucky 40601, **Monday through Friday, 8 a.m. to 4:30 p.m.** [between the hours of 8 a.m. and 4:30 p.m. Monday-Friday.]

ALLEN D. ROSE, Secretary

APPROVED BY AGENCY: October 2, 2000

FILED WITH LRC: October 3, 2000 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, December 12, 2000)

804 KAR 4:015. Interlocking interest between licensees prohibited.

RELATES TO: KRS 243.030, 243.040

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: The control of alcoholic beverages in the Commonwealth of Kentucky, as codified in Chapters 241 - 244 of the Kentucky Revised Statutes, has been established by the Kentucky legislature as a "three tiered" system. The three tiers of this system are designated as producer, wholesale/distributor, and retail. Each of these three (3) levels operate separately and apart from each other for the purpose of control. In order for this control to be effectively administered by this board, it is necessary to prevent any type of interlocking interest by and between the three (3) separate levels. The purpose of this administrative regulation is to clarify the interlocking interests which will be prohibited by this board.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Section 1. As used in this administrative regulation unless otherwise specified:

(1) "Manufacturers" include distillers, rectifiers, blenders, vintners, and brewers whether located within or without this state.

(2) "Wholesalers" include wholesalers of distilled spirits and wine and distributors of malt beverages, located within this state.

Section 2. No manufacturer of distilled spirits or wine shall have a [any] financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, [or otherwise,] in the establishment, maintenance, or operation in the business of a [any] liquor and wine wholesaler.

Section 3. No manufacturer or wholesaler shall have a [any] financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or operation in the business of a [any] retailer. A [No] manufacturer or wholesaler shall not acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a [any] interest in the premises of a retailer.

Section 4. The malt beverage administrator or distilled spirits administrator may examine the ownership and management of applicants or existing licensees to determine the presence of an [any] interlocking interest herein prohibited.

Section 5. This administrative regulation shall not apply to [any] licenses issued prior to December 1, 1976.

RICHARD N. JOHNSTONE, Commissioner
REBECCA W. GOODMAN, General Counsel
APPROVED BY AGENCY: September 19, 2000
FILED WITH LRC: September 19, 2000 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing
(As Amended at ARRS, December 12, 2000)

806 KAR 9:060. Identification cards.

RELATES TO: KRS 304.9-390

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate [make reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation permits an agent [agents] [and solicitors] to have an identification card [cards] for use when he or she is [they are] outside of his or her [their] principal place of business.

Section 1. (1) An [Every] agent [and solicitor] licensed pursuant to KRS Chapter 304.9 may obtain from the commissioner an identification card issued by the Department of Insurance indicating that the agent [he] is a qualified insurance representative in Kentucky.

(2) An insurance agent [insurance agents] [and solicitors] who obtains an [obtain] identification card [cards] pursuant to this administrative regulation shall pay to the commissioner in advance a fee of five (5) dollars per application for each card.

(3) The purpose of an identity card [cards] obtained pursuant to this administrative regulation is to identify an insurance agent [agents] [and solicitors] as a qualified insurance representative [representatives] while selling, soliciting, or negotiating insurance or annuity contracts outside of his or her [their] principal place [places] of business.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 13, 2000 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing
(As Amended at ARRS, December 12, 2000)

806 KAR 9:120. Unlicensed adjusters.

RELATES TO: KRS 304.9-430

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate [make reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation permits the activities of an unlicensed adjuster [adjusters] for a specified period under specific conditions.

Section 1. An unlicensed adjuster [Unlicensed adjusters] sent into his state on behalf of an insurer [insurers] for the adjustment of a series of losses resulting from a catastrophe common to all such losses shall be permitted to do so without being licensed in Kentucky for a period not exceeding ninety (90) [forty-five (45)] consecutive days, which period may be extended by the commissioner for good cause shown.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 13, 2000 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing
(As Amended at ARRS, December 12, 2000)

806 KAR 9:200. Volume of insurance agent exchange of business.

RELATES TO: KRS 304.9-030, 304.9-080, 304.9-410

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate [make reasonable] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-410(3) requires the Commissioner of Insurance to promulgate [adopt] an [a] administrative regulation establishing the amount or volume of business that constitutes the occasional placement of business with insurers the agent is not appointed to represent, as permitted by KRS 304.9-080(5) and 304.9-410(1)(a) and (2). This administrative regulation defines what constitutes occasional placement of business with insurers an agent is not appointed to represent.

Section 1. Definition [Definitions]. As used in this administrative regulation:

[(1)] "General lines insurance agent" has the meaning set forth in KRS 304.9-030 and includes any persons holding limited insurance agent licenses pursuant to KRS 304.9-230 and acting as agent as to any kind of insurance described in KRS 304.9-030(1).

(2) "Life and health insurance agent" has the meaning set forth in KRS 304.9-030(2), (3), and (4) and any person holding a limited insurance agent license pursuant to KRS 304.9-230 and acting as agent in relation to any kind of insurance described in KRS 304.9-030(2), (3), and (4).

(3) "Total premium" means all payments received from insureds or prospective insureds as consideration for insurance, including, but not limited to, all taxes and surcharges imposed by Kentucky law.

Section 2. Volume of Insurance Agent Exchange of Business. (1) An agent holding a license with a line of authority for property, casualty, surety, marine and transportation, or mortgage guaranty or with a limited line of authority as defined in KRS 304.9-230 [A general lines insurance agent] shall not place insurance with a premium of more

than twenty (20) percent of the agent's total premium for the preceding calendar year with insurers for which the agent holds no appointment. Insurance placed by ~~an [a general lines insurance]~~ agent through a residual market mechanism as defined in KRS 304.13-011(8), with a surplus lines insurer pursuant to KRS Chapter 304.10, through a managing general agent as defined in KRS 304.9-085, or through a voluntary risk sharing or market assistance plan pursuant to KRS Chapter 304.46 shall not be considered in determining whether ~~the~~ [such] agent has violated this subsection.

(2) ~~An agent holding a license with a line of authority for life or health or with a line of authority for limited line credit [A life and health insurance agent]~~ shall not place insurance with a premium of more than twenty (20) percent of the agent's total premium for the preceding calendar year with insurers for which the agent holds no appointment.

Section 3. ~~Business Entity [Corporate or Partnership] Licensees [and Sole Proprietors].~~ For agents designated to act under a ~~business entity [corporate or partnership insurance]~~ agent license ~~[or agents who are employees of a sole proprietor who is licensed as insurance agent]~~, the percentage limitations of Section 2 of this administrative regulation shall be measured by the total premium received by the ~~business entity [corporate or partnership agent or the sole proprietor].~~ [Thus,] Persons designated to act under a ~~business entity [corporate or partnership insurance]~~ agent license ~~[or employed by a sole proprietor licensed as insurance agent]~~ are subject to a single overall limit and ~~shall [may]~~ not use their separate licenses to increase the volume of permissible exchange of business.

Section 4. Responsibilities of Insurer; Validity of Insurance Issued in Violation of this Administrative Regulation. (1) ~~An insurer [insurers]~~ may assume that agents not appointed by the insurer and submitting applications to the insurer have not exceeded the limitations of Section 2 of this administrative regulation. However, ~~an insurer [insurers]~~ which ~~knows [know]~~ or ~~has [have]~~ reason to know that an agent is in violation of Section 2 of this administrative regulation shall not issue an insurance policy based on an application submitted by ~~this [such]~~ agent.

(2) An insurance policy issued in violation of this administrative regulation is valid and enforceable.

Section 5. Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 12, 2000

FILED WITH LRC: October 13, 2000 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Division of Agent Licensing

(As Amended at ARRS, December 12, 2000)

806 KAR 9:210. Time limit for replacement of evidence of licensee financial responsibility.

RELATES TO: KRS 304.9-105, 304.9-330, 304.9-430, 304.9-705, 304.15-700

STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 304.2-110, 304.9-105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate [make reasonable] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-105(6) [(5)](d) requires the Commissioner of Insurance to establish a time limit for licensees to replace evidence of financial responsibility which has been terminated. This administrative regulation establishes a time limit for licensees to replace evidence of financial responsibility which is being [has been] terminated.

Section 1. Definitions. As used in this administrative regulation:

(1) ~~["Commissioner"] means the Commissioner of the Kentucky Department of Insurance.~~

(2) "Evidence of financial responsibility" means the documents described in KRS 304.9-105(6) [(5)], 304.9-330, 304.9-705(3), 304.10-140, 304.15-700(4), and 806 KAR 9:030, Section 1.

(2) [(3)] "Licensee" means an agent, a consultant, a surplus lines broker, a reinsurance intermediary manager, a viatical broker, a viatical provider, and an adjuster [agents, {solicitors,} consultants, surplus lines brokers, reinsurance intermediary managers, viatical brokers, viatical providers, and adjusters] required by the Kentucky Insurance Code or administrative regulations of the commissioner to maintain evidence of financial responsibility on file with the Department of Insurance.

Section 2. Time Limit for Replacement of Evidence of Licensee Financial Responsibility. A licensee shall replace evidence of financial responsibility on or before thirty (30) days from the date notice is mailed by the commissioner to the licensee's address of record filed with the commissioner.

Section 3. Responsibility of Insurers and Financial Institutions Providing Financial Responsibility to Licensees. (1) The thirty (30) days prior written notice of cancellation of financial responsibility required by KRS 304.9-105(6), 304.10-140, and 304.15-700(4) shall be measured from the date the department receives the written notice.

(2) The insurer or financial institution shall give written notice to the commissioner on Form 99-5 electronically or by mail.

(3) The insurer or financial institution shall give at least thirty (30) days prior written notice of cancellation on the same date to the commissioner and to the licensee.

(a) The commissioner shall be notified by the insurer or financial institution by filing the completed Form 99-5 with the department.

(b) The licensee shall be notified by the insurer or financial institution by mailing a copy of the completed Form 99-5 to the licensee's last known address. For legal liability policies, this notice shall be in addition to any notice required by KRS 304.20-320.

Section 4. Incorporation by Reference. (1) Form 99-5 "Financial Responsibility Cancellation Form (12 [10]/2000 edition)" is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance at 215 West Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. [Effective Date: This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 12, 2000

FILED WITH LRC: October 13, 2000 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Division of Agent Licensing

(As Amended at ARRS, December 12, 2000)

806 KAR 9:250. Specialty credit insurance producer and managing employee.

RELATES TO: KRS 304.9-480, 304.9-485 [2000 Ky. Acts ch. 194]

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes [sets forth] the information to be included in the application and amendments to the application for specialty credit insurance producer and managing employee licenses. Also, this administrative regulation establishes [sets forth] the procedures for recordkeeping by the licensed specialty credit insurance producer.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Section 1. Application and Amendments. (1) The license application for a specialty credit insurance producer shall be submitted as a package, and shall include:

(a) Form 8301-BE for the business entity specialty credit insurance producer applicant or Form 8301 for the individual specialty credit insurance producer applicant signed by the applicant and the appointing insurer;

(b) Form 8301 for each managing employee applicant signed by the applicant and the appointing insurer;

(c) Form 8301-SC signed by the specialty credit insurance producer applicant and all managing employee applicants; and

(d) The fees specified in KRS 304.4-010 and the applicable administrative regulations.

(2) A licensed specialty credit insurance producer shall submit an amended Form 8301, Form 8301-BE, or 8301-SC, as applicable, no later than thirty (30) days from the date of any change.

Section 2. Licensed Managing Employee. (1) A licensed specialty credit insurance producer shall not transact insurance at any business location that does not have a licensed managing employee assigned to that location.

(2) The licensed specialty credit insurance producer shall assume responsibility for the insurance activities of its licensed managing employees.

Section 3. Unlicensed Employees and Representatives. (1) Upon completion of the required training for unlicensed employees and representatives, the licensed specialty credit insurance producer shall obtain a certification in writing from each unlicensed employee or representative that he or she received the instruction with respect to the required consumer disclosures. The certification shall include the date of the instruction.

(2) The licensed specialty credit insurance producer shall maintain complete records of the certification required by this section at the business location of each unlicensed employee or representative for at least three (3) years.

(3) The licensed specialty credit insurance producer shall assume responsibility for the insurance activities of its unlicensed employees and representatives.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 8301-BE "Resident Business Entity License Application (10/2000 edition)";

(b) Form 8301 "Resident Individual License Application (10/2000 edition)"; and

(c) Form 8301-SC "Specialty Credit Insurance Producer Supplement to License Application (7/2000 edition)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance at 215 West Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLLOUD, Secretary

APPROVED BY AGENCY: October 12, 2000

FILED WITH LRC: October 13, 2000 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended at ARRS, December 12, 2000)

806 KAR 11:010. Industrial insured, government entity insured, and exempt commercial policyholder.

RELATES TO: KRS 304.11-020, 304.13-051, 304.14-120[~~2000 Ky. Act ch. 145~~]

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance shall promulgate [make] reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance

Code. This administrative regulation provides the means by which the Commissioner may determine whether a proposed insured meets the definition of an "industrial insured", a "government entity insured", and an "exempt commercial policyholder".

Section 1. (1) [~~Prior to being recognized as~~] An "industrial insured" as defined in KRS 304.11-020(2)(a), ~~shall be [means] an~~ [(+), a proposed] insured who filed an [shall make] affidavit to the commissioner prior to July 1, 1999, establishing that it satisfied the then-existing criteria for obtaining that status. [~~of insurance, stating the following:~~]

(2) All "industrial insureds" shall reapply for their status, prior to December 31, 2000, by filing with the commissioner an "Industrial Insured Affidavit" (Form II-1 P & C) for his approval, certifying that the requirements of KRS 304.11-020(2)(a) continue to be satisfied.

Section 2. Prior to being recognized as a "government entity insured" as defined in KRS 304.11-020(2)(b), a proposed insured shall file with the commissioner a "Government Entity Insured Affidavit" (Form GEI-1 P & C) for his approval.

Section 3. Prior to being recognized as an "exempt commercial policyholder" as defined in KRS 304.11-020(2)(c), a proposed insured shall file with the commissioner an "Exempt Commercial Policyholder Affidavit" (Form ECP-1 P & C) for his approval.

[(1) The name and address of the full-time employee acting as insurance manager or buyer or the name and address of the regularly and continuously retained qualified insurance consultant;

(2) The estimated aggregate premiums for insurance on all risks; and an explanation of the computation of the estimate;

(3) The number of full-time employees;

(4) Other information as the Commissioner of Insurance may reasonably require.]

Section 4. [2:] The commissioner [~~of insurance~~] may, at his discretion, cause an investigation into the facts set forth in the proposed insured's affidavit.

Section 5. All filings of an initial certification or renewal shall be accompanied by the appropriate filing fee.

Section 6. All industrial insureds, government entity insureds and exempt commercial policyholders shall apply for renewal of their respective status with the commissioner every three (3) years.

Section 7. (1) All property and casualty insurers, prior to issuing a policy of insurance to an industrial insured, government entity insured, or exempt commercial policyholder, shall obtain a copy of the approved Forms II-1 P & C, GEI-1 P & C, and ECP-1 P & C. The insurer shall make these approved forms available for examination by the commissioner.

(2) It shall be permissible for any person to file the appropriate affidavit on behalf of an "industrial insured", "government entity insured" or "exempt commercial policyholder".

Section 8. [3:] After designating an insured an "industrial insured", "government entity insured", or "exempt commercial policyholder" the commissioner [~~of insurance~~] may, from time to time, cause an investigation or unannounced audit to ascertain that the requirements for the [such] designation [an "industrial insured"] continue to be satisfied [met].

Section 9. [~~The forms specified in this administrative regulation shall be copies of forms prepared by the Department of Insurance and incorporated by reference to this administrative regulation. The commissioner may amend or change the forms to meet the requirements of the Department of Insurance and other regulatory authorities:~~]

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form II-1 P & C, "Industrial Insured Affidavit", June, 2000 edition, Department of Insurance.

(b) Form GEI-1 P & C, "Government Entity Insured Affidavit", June, 2000 edition, Department of Insurance.

(c) Form ECP-1 P & C, "Exempt Commercial Policyholder Affidavit", June, 2000 edition, Department of Insurance.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or on the department's internet website: www.doi.state.ky.us.

JULIE MIX MCPEAK, Acting General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 11, 2000

FILED WITH LRC: October 12, 2000 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, December 12, 2000)

806 KAR 13:090. Premium financing.

RELATES TO: KRS 304.13-051, 304.13-071, 304.13-031, 304.30-090[; 2000 Ky. Acts ch. 380] [304.13-030]

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation permits additional charges to be made on insurance premiums when the premiums are made in installments.

Section 1. A property or casualty insurer, after filing with and approved by the Commissioner of Insurance, may charge a different rate for insurance when the premium therefor is payable in installments rather than in cash.

Section 2. Additional charges based on installment payments shall not exceed those permitted to be charged by premium finance companies; nor shall such financing be on terms less favorable to insureds than are permitted in financing by premium finance companies.

Section 3. Gross premiums on any policies, whether arising from cash rate premiums, installment service charges, or any other surcharges approved by the commissioner, shall be used as the basis upon which premium taxes shall be determined.

JULIE MIX MCPEAK, Acting General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 11, 2000

FILED WITH LRC: October 11, 2000 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, December 12, 2000)

806 KAR 13:150. Property and casualty rate and rule filings.

RELATES TO: KRS 304.13-031, 304.13-051, 304.13-061, 304.13-081[; 2000 Ky. Acts ch. 380]

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010, 304.12-010, 304.12-020, 304.12-160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides property and casualty rate and rule filing procedures.

Section 1. Every insurer, other than life or health insurers, required by law or licensed advisory organization, or statistical agent permitted by law to file rates, loss costs, rating plans, rating rules,

underwriting rules or guidelines, statistical plans, advertising and sales materials, or other documents shall file with these documents a fully completed and signed Form F-1A P & C, "Face Sheet and Verification Form for Individual Insurers", and if applicable Form F-1G P & C, "Group Member Companies Included in this Filing".

Section 2. All filings shall include two (2) full document sets with three (3) cover letters and a self-addressed stamped envelope.

Section 3. A filing may include any number of documents, filed together on a particular date, pertaining to a single line of insurance. Rates, loss costs and rules shall be filed separately from forms.

Section 4. (1) All rate or loss cost filings shall also be accompanied by Form S-1 P & C, "Filing Synopsis for Rates".

(2) All rate or loss cost filings shall include a separate Form S-1 P & C for each company included in the filing.

Section 5. (1) All rule filings shall be accompanied by Form S-3 P & C, "Filing Synopsis for Rules".

(2) All rule filings shall include a separate Form S-3 P & C for each company included in the filing.

Section 6. (1) All rate filings referencing loss costs formulated by any advisory organization shall be accompanied by Form LC-1 P & C, "Calculation of Loss Cost Multiplier". All rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used ~~shall~~ **[must]** be accompanied by Form LC-2 P & C, "Expense Constant Supplement".

(2) All rate filings to which this section applies shall include separate Forms LC-1 P & C and LC-2 P & C for each company included in the filing.

Section 7. (1) Any rate filing, or any filing containing a rule, or underwriting rule or guideline that impacts a rate or rates submitted by an insurer, or insurance group, regarding personal automobile insurance shall be accompanied by three (3) copies of a completed Form SG-1 P & C, "Shopper's Guide Rate Comparison for Auto Insurance".

(2) Any rate filing, or any filing containing a rule, or underwriting rule or guideline that impacts a rate or rates submitted by an insurer, or insurance group regarding homeowners' insurance shall be accompanied by three (3) copies of a completed Form SG-2 P & C, "Shopper's Guide Rate Comparison for Homeowners' Insurance".

(3) All filings to which this section applies shall include a separate Form SG-1 P & C or SG-2 P & C for each company included in the filing.

~~Section 8. [The forms specified in Sections 1 through 9 of this administrative regulation shall be copies of the forms prepared by the Department of Insurance and incorporated by reference to this administrative regulation. The commissioner may amend or change the forms to meet the requirements of the Department of Insurance and other regulatory authorities.]~~

~~Section 9.]~~ A property and casualty rate or rule filing may include rates for a particular insurance company, or group of insurance companies if the material is identical to all companies. If the filing is made for a group of insurance companies, Form F-1G P & C shall be filed to identify all member companies of the group that are to be included in the filing.

~~Section 9. [10:]~~ Filing fees shall be paid on a per company basis. Since by the provisions of KRS 304.4-010 all fees and charges payable under the insurance code are required to be collected in advance, the period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee are received by the department.

~~Section 10. [11:]~~ (1) Insurers that are members, subscribers or service purchasers of an advisory organization or statistical agent may choose to adopt all or some of the loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or

statistical agent.

(2) When an insurer chooses to adopt only a specific filing of an advisory organization or statistical agent, it shall do so in accordance with the procedures set forth in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting.

(3)(a) When an insurer chooses to adopt all of the current and future loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of an advisory organization or statistical agent, it may:

1. Provide written authorization to the advisory organization or statistical agent to notify the commissioner that the insurance company shall [will] adopt all of the loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans that the advisory organization or statistical agent files on its behalf; or

2. File written notice with the commissioner that the insurer is adopting by reference all of the current and future loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans that the advisory organization or statistical agent files.

(b) If required by law to file its rates an insurer may file a loss cost multiplier, in accordance with the provisions of this administrative regulation, to adopt the prospective loss costs filed by an advisory organization. The insurer may apply its loss cost multiplier to a specific loss cost filing, or may elect to have its multiplier apply to all future loss costs filed by the advisory organization.

(c) The advisory organization or statistical agent shall file the written notice of authorization referred to in paragraphs (a) and (b) of this subsection with the commissioner and shall pay the appropriate fee. The fee shall be paid for each company sending a [such] written authorization and on the basis of each line of insurance.

(d)1. When an insurer that previously authorized an advisory organization or statistical agent to file loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans on its behalf chooses to not adopt certain loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans as filed on its behalf by the advisory organization or statistical agent, or changes its loss cost multiplier, the insurer shall file a notice of the nonadoption or change of its loss cost multiplier with the commissioner and shall pay the appropriate filing fee.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or statistical agent filing, it shall [must] submit a letter requesting the revised date upon which it will adopt the filing.

b. The delayed adoption date shall [must] be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted, requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall [must] be within one (1) year of the original effective date as filed by the advisory organization or statistical agent.

3. If an insurer fails to [will not] adopt the advisory organization or statistical agent filing within one (1) year of the original effective date as filed by the advisory organization or statistical agent, the insurer shall submit a filing indicating it is not adopting.

Section 11. [12:] Property and casualty insurance companies, advisory organizations and statistical agents may file their prospective loss costs or rates in an electronic format established by the National Association of Insurance Commissioners, in the manner prescribed by that [prescribed by such] format. Any [such] electronic filing shall be in lieu of any physical filing.

Section 12. [13:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form F-1A P & C, "Face Sheet and Verification Form for Individual Insurers", June, 2000 edition, Department of Insurance.

(b) Form F-1G P & C, "Group Member Companies Included in this Filing", May, 2000 edition, Department of Insurance.

(c) Form S-1 P & C, "Filing Synopsis for Rates", January, 1999

edition, Department of Insurance.

(d) Form S-3 P & C, "Filing Synopsis for Rules", January, 1999 edition, Department of Insurance.

(e) Form LC-1 P & C, "Calculation of Loss Cost Multiplier", February, 1997 edition, Department of Insurance.

(f) Form LC-2 P & C, "Expense Constant Supplement", February, 1997 edition, Department of Insurance.

(g) Form SG-1 P & C, "Shopper's Guide Rate Comparison for Personal Auto Insurance", July, 1999 edition, Department of Insurance.

(h) Form SG-2 P & C, "Shopper's Guide Rate Comparison for Homeowners' Insurance", July, 1999 edition, Department of Insurance.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department's internet web site at:

www.doi.state.ky.us.

JULIE MIX MCPEAK, Acting General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 11, 2000

FILED WITH LRC: October 12, 2000 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended at ARRS, December 12, 2000)

806 KAR 14:005. Rate and form filing for life and health insurers.

RELATES TO: KRS 304.4-010, [304.13-031, 304.13-051, 304.13-061, 304.13-081,] 304.14-120, 304.14-190, 304.17A-095

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides rate and form filing procedures for life and health insurers.

Section 1. (1) ~~[(1) Every insurer, other than life or health insurers, required by law or licensed advisory organization permitted by law to file rates, rating plans, policy forms or endorsements, underwriting rules, statistical plans, advertising and sales materials, or other documents shall file with these documents a fully completed and signed "face sheet and verification form" (Form F-1P&C). In addition, rate filings shall be accompanied by a filing synopsis for rates (Form S-1); form filings shall be accompanied by a filing synopsis for forms (Form S-2); and rule filings shall be accompanied by a filing synopsis for rules (Form S-3). Any rate filing referencing loss costs formulated by any advisory organization shall be accompanied by a calculation of loss cost multiplier (Form LG-1).~~

~~(2) Life and Health insurance rate and form filings shall be accompanied by a face sheet and verification form (Form HIPMC-F1, September, 2000 edition).~~

~~(2) Health [F-1-LH:] policy forms filed under policy form certification shall be accompanied by a certification form (Form HIPMC-F2, September, 2000 edition). [LH-2]. Life and annuity form filings shall be accompanied by actuarial certification (Form LH-3).]~~

~~(3) Individual health insurance form filings shall be accompanied by actuarial certification (Form HIPMC-R4, September, 2000 edition).~~

~~(4) The department shall use Form HIPMC-F16 to request additional information from a health insurer when a rate or form filing cannot be accepted as submitted.~~

Section 2. (1) Life insurance form filings shall be accompanied by a face sheet and verification form (Form F-1).

(2) Life insurance forms filed under policy form certification shall be accompanied by a certification form (Form LH-2). Life and annuity

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

form filings shall be accompanied by actuarial certification (Form LH-3). [LH-4:]

Section 3. [2:] [The forms specified in Sections 1 and 2 (Section 1) of this administrative regulation shall be copies of the forms prepared by the Department of Insurance and incorporated by reference to this administrative regulation. The commissioner may amend or change the forms to meet the requirements of the Department of Insurance and other regulatory authorities.]

Section 4. [3-(1)] An entity may include in a filing for a particular insurance company any number of forms or documents, filed together on a particular date, pertaining to a single line of insurance.

[(2) However, as to insurance other than life or health, forms shall be filed separately from rates and rules, but rates and rules may be filed together or separately.]

Section 4. [5:] [4:] Since by the provisions of KRS 304.4-010 all fees and charges payable under the insurance code are required to be collected in advance, the period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin to run until both the filing and appropriate fee are received by the department.

Section 5. [6:] [5:] A policy or contract form shall not be used in Kentucky until it has been approved, and, if rates for the form are required by law to be approved, the appropriate rate schedule therefor has been approved.

Section 6. [7:] [6:] If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filer setting forth all changes contained in the newly filed form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and the rates applicable thereto.

Section 7. [8:] [7:] (1) Facsimile signatures of company officers, attorneys-in-fact, employees and representatives shall not be required and shall not be submitted with any filing.

(2) A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 8. [9:] Life and health insurance companies may file their rates and forms in an electronic format established by the National Association of Insurance Commissioners, in the manner prescribed [proscribed] by that [such] format. Any [such] electronic filing shall be in lieu of any physical filing.

Section 9. [10:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-F1, "Face Sheet and Verification Form", Department of Insurance, September, 2000 edition;

(b) Form HIPMC-F2, "Health Policy Certification Form", Department of Insurance, September, 2000 edition;

(c) Form HIPMC-R4, "Actuarial Certification for Individual Health Form Filings", Department of Insurance, September, 2000 edition;

(d) Form HIPMC-F16, "Additional Health Information Request", Department of Insurance, September, 2000 edition.

(e) Form LH-2, "Policy Forms Filing Certification Privilege Program", Department of Insurance, July, 2000 edition.

(f) Form F-1, "Life Insurance Face Sheet and Verification Form", (2 pages), Department of Insurance, July, 2000 edition;

(g) Form LH-3, "Life and Annuity Filings Actuarial Certification Form", Department of Insurance, July, 2000 edition.

(2) This material may be inspected, copied or obtained, **subject to applicable copyright law**, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's internet web site at:

www.doi.state.ky.us.

[Section 8. Forms numbered "F-1P&C", "S-1", "S-2", "S-3", "LC-1", "F-1 LH", "LH-2", "LH-3", and "LH-4", revised in January 1992, are

prescribed by the department and herein incorporated by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.]

JULIE MIX MCPEAK, Acting General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 11, 2000

FILED WITH LRC: October 12, 2000 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended at ARRS, December 12, 2000)

806 KAR 14:006. Property and casualty insurance form filings.

RELATES TO: KRS 304.4-010, 304.14-120, 304.14-190[–2000 Ky. Acts ch. 380]

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010, 304.12-010, 304.12-020, 304.12-160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides property and casualty form filing procedures.

Section 1. Every insurer, other than life or health insurers, required by law or licensed advisory organization or form provider permitted by law to file policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates shall file with these documents a fully completed and signed Form F-1A P&C, "Face Sheet and Verification Form for Individual Insurers", and if applicable, Form F-1G P&C, "Group Member Companies Included in this Filing".

Section 2. All filings shall include two (2) full sets of documents with three (3) cover letters and a self-addressed stamped envelope.

Section 3. A filing may include any number of documents, filed together on a particular date, pertaining to a single line of insurance. Forms shall be filed separately from rates and rules.

Section 4. (1) All form filings shall also be accompanied by Form S-2 P & C, "Filing Synopsis for Forms", and Form F-2 P & C, "Forms Index".

(2) All form filings shall include a separate Form S-2 P & C for each company included in the filing.

Section 5. No policy or form may be used in Kentucky until it has been approved. If the rates pertaining to a form are required by law to be filed or approved, the form may not be used until the appropriate rates have been filed or approved as required.

Section 6. [The forms specified in Sections 1 through 4 of this administrative regulation shall be copies of the forms prepared by the Department of Insurance and incorporated by reference to this administrative regulation. The commissioner may amend or change the forms to meet the requirements of the Department of Insurance and other regulatory authorities.]

Section 7. A property and casualty form filing may include forms for a particular insurance company or group of insurance companies. If the filing is made for a group of insurance companies, Form F-1G P&C is to be filed to identify all member companies of the group that are to be included in the filing.

Section 7. [8:] Filing fees shall be paid on a per-company basis. Since by the provisions of KRS 304.4-010 all fees and charges payable under the insurance code are required to be collected in advance,

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

the period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee are received by the department.

Section 8. [9:] (1) Insurers that are members, subscribers or service purchasers of an advisory organization or form provider permitted by law to file policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates may choose to adopt all or some of the forms of that advisory organization or form provider.

(2) When an insurer chooses to adopt only a specific filing of an advisory organization or form provider, it shall do so in accordance with the procedures set forth in this administrative regulation, and shall clearly identify which filing of the advisory organization or form provider it is adopting.

(3)(a) When an insurer chooses to adopt all of the policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates of an advisory organization or form provider, it may:

1. Provide written authorization to the advisory organization or form provider to file those materials on the insurer's behalf [half]; or

2. File written notice with the commissioner that it is adopting by reference all the current and future policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates that the advisory organization or form provider files.

(b) The advisory organization or form provider shall file the written notice of authorization referred to in paragraph (a)1 of this subsection with the commissioner and shall pay the appropriate fee. The fee shall be paid for each company sending the [such] written authorization and on the basis of each line of insurance.

(c)1. When an insurer that previously authorized an advisory organization or forms provider to file on its behalf as referred to in paragraph (a)1 of this subsection, or an insurer that filed written notice with the commissioner to adopt by reference as referred to in paragraph (a)2 of this subsection chooses to not adopt certain policy forms or endorsements, advertising and sales materials, or other documents other than those pertaining to rates as filed by the advisory organization or form provider, the insurer shall file a notice of the nonadoption with the commissioner and shall pay the appropriate filing fee.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or forms provider filing, it **shall** [must] submit to the department a letter requesting the revised date upon which it will adopt the filing.

b. The delayed adoption date **shall** [must] be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted to the department, requesting a revised delayed adoption date.

d. All revised delayed adoption dates **shall** [must] be within one (1) year of the original effective date as filed by the advisory organization or forms provider.

3. If an insurer **does** [will] not adopt the advisory organization or forms provider filing within one (1) year of the original effective date as filed by the advisory organization or forms provider, the insurer shall submit to the department a nonadoption filing.

Section 9. [10:] If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filer setting forth all changes contained in the newly filed form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

Section 10. [11:] (1) Facsimile signatures of company officers, attorneys-in-fact, employees and representatives shall not be required and shall not be submitted with any filing.

(2) A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 11. [12:] Property and casualty insurance companies, advisory organizations and form providers may file their forms in an electronic format established by the National Association of Insurance Commissioners, in the manner **prescribed** [proscribed] by **that** [such]

format. Any [such] electronic filing shall be in lieu of any physical filing.

Section 12. [13:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form F-1A P&C, "Face Sheet and Verification Form for Individual Insurers", June, 2000 edition, Department of Insurance.

(b) Form "F-1G P&C", "Group Member Companies Included in this Filing", May, 2000 edition, Department of Insurance.

(c) Form F-2 P & C, "Forms Index", July, 1999 edition, Department of Insurance.

(d) Form S-2 P & C, "Filing Synopsis Form", January, 1999 edition, Department of Insurance.

(2) This material may be inspected, copied, or obtained, **subject to applicable copyright law**, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's internet web site at:

www.doi.state.ky.us.

JULIE MIX MCPEAK, Acting General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 11, 2000

FILED WITH LRC: October 12, 2000 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended at ARRS, December 12, 2000)

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-210, 304.20-160, 304.20-300 to 304.20-350, 304.30-110

STATUTORY AUTHORITY: KRS Chapter 13A, 304.2-110, 304.30-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.30-070 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for the effectuation of any provision of KRS Chapter 304.30. This administrative regulation provides certain guidelines for the declination, cancellation, and nonrenewal of property and casualty insurance pursuant to KRS 304.20-300 to 304.20-350.

Section 1. [Definitions. The definitions of KRS 304.20-300 and 304.20-310 apply to this administrative regulation.

Section 2.] Application of KRS 304.20-300 to 304.20-350 to Property and Casualty Insurance Policies. [(1)] KRS 304.20-300 to 304.20-350 apply to declinations, cancellations, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies described in KRS 304.20-300 delivered, issued for delivery, or renewed after July 15, 1986.

[(2) KRS 304.20-300 to 304.20-350 apply to every declination which occurs after July 15, 1986:

(3) KRS 304.20-300 to 304.20-350 apply to the cancellation, nonrenewals, and twenty-five (25) percent premium increases of all property and casualty insurance policies delivered or issued for delivery after July 15, 1986:

(4) KRS 304.20-300 to 304.20-350 apply to the cancellation, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies in existence on July 15, 1986, only after such policies have been renewed after July 15, 1986:

(5) The 1988 amendments to KRS 304.20-300 to 304.20-350 apply to:

(a) Declinations which occur on or after July 15, 1988;

(b) Cancellations, nonrenewals, and twenty-five (25) percent premium increases of all property and casualty insurance policies delivered or issued for delivery to be effective on or after July 15, 1988; and

(c) Cancellations, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies in existence on July 15, 1988, only after such policies have been renewed after July 15, 1988.]

Section 2. [3.] Notice of Reason for Declination, Cancellation, or Nonrenewal. (1) In every instance where KRS 304.20-300 to 304.20-350 require a reason for declination, cancellation, or nonrenewal to be given to an applicant or an insured, the reason given shall be a statement reasonably calculated to inform the applicant or insured of the reason for the declination, cancellation, or nonrenewal. The insurer shall provide specific grounds for nonrenewal, and shall not rely on underwriting reasons in general. [For example, the statement that a policy was nonrenewed for "underwriting reasons" is inadequate.]

(2) Subsection (1) of this section shall [does] not apply where a risk is declined or a policy terminated where there is specific information available for review by the Commissioner of Insurance that the insured has contributed to a loss by arson or fraud. A more general reason may be given to the insured in this situation.

(3) The fact that the reason or reasons for declination, cancellation, or nonrenewal have [has] been obtained through an investigative consumer report subject to the Fair Credit Reporting Act, 15 USC 1681 et seq., shall [do] [does] not relieve the insurer from the requirement of notifying the insured of the declination, cancellation, or nonrenewal pursuant to KRS 304.20-300 to 304.20-350. However, any insured wishing to learn the substance of an investigative consumer report shall [must] be directed to contact the consumer reporting agency and follow the procedures contained in the Fair Credit Reporting Act.

(4) A reason for cancellation or nonrenewal which does not appear in the notice of cancellation or nonrenewal shall not be a basis for cancellation or nonrenewal.

Section 3. [4.] [Policy Forms. (1) Policy forms filed with and approved by the Commissioner of Insurance as of July 15, 1986, need not be amended to comply with KRS 304.20-300 to 304.20-350, but insurers using such forms shall adopt procedures which conform to KRS 304.20-300 to 304.20-350. Policy forms filed with and approved by the Commissioner of Insurance as of July 15, 1988, need not be amended to comply with the 1988 amendments to KRS 304.20-300 to 304.20-350, but insurers using such forms shall adopt procedures which conform to the 1988 amendments to KRS 304.20-300 to 304.20-350.

(2) Policy forms filed with the Commissioner of Insurance after July 15, 1986, shall contain language complying with KRS 304.20-300 to 304.20-350. Policy forms filed with the Commissioner of Insurance after July 15, 1988, shall contain language complying with the 1988 amendments to KRS 304.20-300 to 304.20-350.

Section 5. [Cancellation for Nonpayment of Premium Under Insurance Premium Finance Company Contracts Controlled by KRS Chapter 304.30. (1) If an insurance premium finance company exercises its power of attorney to cancel a policy pursuant to KRS 304.30-110, that [such] cancellation is considered to be a cancellation at the request of the insured and shall not be subject to KRS 304.20-300 to 304.20-350.

(2) The phrases "premium finance plan" and "extension of credit" in KRS 304.20-310(2) refer to extensions of credit to pay for insurance which are made by insurers or other entities not subject to KRS Chapter 304.30.

[Section 5. [6.] Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

JULIE MIX MCPEAK, Acting General Counsel

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 11, 2000

FILED WITH LRC: October 11, 2000 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, December 12, 2000)

806 KAR 38:020. Health maintenance organization agent license.

RELATES TO: KRS 304.38-110

STATUTORY AUTHORITY: KRS 304.38-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.38-110

provides that the commissioner shall promulgate [rules and] administrative regulations necessary for licensure of a health maintenance organization agent and the termination or revocation of this license. KRS 304.38-150 further provides that the commissioner may promulgate administrative regulations that are necessary for the proper administration of Subtitle 38. This administrative regulation provides that agents for health maintenance organizations be licensed and regulated as health agents subject to Subtitle 9 to be consistent with KRS 304.9-030(2)(b) [2000 Ky. Acts ch. 393]. [sets forth basic procedures to acquire and to keep an agents' license.]

Section 1. Any person who acts as an agent for a health maintenance organization shall be licensed as a health agent in accordance with the requirements of KRS Chapter 304, Subtitle 9 and any applicable administrative regulations.

Section 2. Any person who acts as an agent for a health maintenance organization shall be subject to all provisions of KRS Chapter 304 and related administrative regulations that apply to health agents. [(1) An "agent" means any person directly or indirectly associated with such organization who engages for profit or pecuniary gain in the solicitation or enrollment of persons in a health maintenance organization.

(2) "Profit or pecuniary gain" as used in this section means any type of compensation that a person receives from the health maintenance organization for which the solicitation or enrollment of members is made.

Section 2. To qualify for an agent's license, an applicant shall:

(1) Be above the age of eighteen (18) years;

(2) Be competent, trustworthy, and of good reputation;

(3) Be financially responsible and demonstrate financial responsibility as provided in KRS 304.9-105(5);

(4) Pass any written examination required for the license under KRS Chapter 304, Subtitle 38, except when the applicant is a nonresident who has filed with the Commissioner a certification from his home state that the applicant is licensed in good standing as an agent for health insurance or health maintenance organizations;

(5) Be appointed as an agent by one (1) or more corporations subject to the provisions of KRS Chapter 304, Subtitle 38;

(6) Make application to the commissioner in the manner and form prescribed by him;

(7) Pay the fee provided in KRS 304.4-010;

(8) Successfully complete specific courses of instruction in the field of insurance as prescribed and approved by the commissioner for the license when initially issued. These courses of instruction shall in the aggregate consist of or equal forty (40) hours of classroom instruction administered by or under the supervision of persons qualifying with and approved by the commissioner for such purpose and the successful completion of which shall be certified to the commissioner, on forms prescribed by him, by the person under whose supervision such instruction was administered; and

(9) Agents who hold licenses issued on or after July 1, 1994, shall be subject to continuing education requirements as specified in KRS 304.9-295 subsections (4) through (10) and 806 KAR 9:220.

Section 3. Agents' licenses shall expire as of 12:01 a.m. on the first day of April, 1983, and biennially thereafter, unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by him, a request for continuation of license. The request must be accompanied by payment of the renewal fee as provided in KRS 304.4-010. However, any request for continuation received by the commissioner after such April 1 and prior to the next following

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

June 30 may be accepted and effectuated by the commissioner if accompanied by a penalty as provided in KRS 304.99-100.

Section 4. (1) Each corporation qualified under KRS Chapter 304, Subtitle 38 appointing an agent shall notify the commissioner by filing written notice in duplicate with the commissioner on forms prescribed and furnished by him, and shall pay the fee as provided in KRS 304.4-010. If the agent is then licensed, or as soon as licensed, the commissioner shall mail the appointment certificate to the corporation.

(2) Each appointment shall continue in force until:

(a) The commissioner notifies the corporation that the agent's license is suspended or revoked;

(b) The appointment is terminated by the corporation by written notice of termination filed with the commissioner; or

(c) The corporation fails to renew the appointment.

Section 5. The commissioner may suspend, revoke, or refuse to renew any license issued under this administrative regulation, for any of the following causes:

(1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(2) If the licensee willfully violates or knowingly participates in the violation of any provision of KRS Chapter 304, Subtitle 38 or this administrative regulation;

(3) If the licensee obtains or attempts to obtain a license through willful misrepresentation or fraud, or fails to pass any examination required under KRS Chapter 304, Subtitle 38;

(4) If the licensee has been convicted, by final judgment, of a felony involving moral turpitude;

(5) If in the conduct of his affairs under the license, the licensee has shown himself to be, and is deemed by the commissioner to be, incompetent or untrustworthy;

(6) If the licensee exercises powers outside the scope of his license;

(7) If the licensee commits any violation of the provisions of KRS Chapter 304 or any administrative regulation of the commissioner as made applicable to him.]

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: October 12, 2000

FILED WITH LRC: October 13, 2000 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (As Amended at ARRS, December 12, 2000)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 198B.040(7), 198B.050, 198B.060, 198B.070

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. This administrative regulation establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction and to collect fees for those activities.

Section 1. Uniform Criteria for Granting Expanded Jurisdiction. To petition [apply] for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.

(1) A local government shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the department together with the supporting documentation required by this administrative regulation.

(2) Certified inspector required. The local government shall employ or contract with a person, firm, or company to perform the plans

and specifications inspection or building inspection functions granted to the local government.

(a) The local government shall employ or contract with a certified electrical inspector and other code enforcement personnel and support staff necessary to enforce the Kentucky Building Code within the expanded jurisdiction.

(b) The local government shall have at least one (1) person who is a certified plans and specifications inspector (Level III), pursuant to 815 KAR 7:070 reviewing the plans and specifications and performing building inspections. The designated Level III inspector shall have a minimum of three (3) years experience in that capacity.

(3) Additional personnel. A complete list of code enforcement personnel, including the designated plans and specifications inspector and certified electrical inspector, that shall be employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted. The list of personnel shall include the name, job title and certification status of each individual.

(4) Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity with the expanded jurisdiction.

(5) Contracts with other local governments. If a person, firm, or company has been contracted to provide plans and specifications inspection functions and the person, firm, or company provides inspection services for other local governments, the documentation of permit and fee activity required by subsection (4) of this section shall be provided for each of the other local governments.

(6) Official contact person. The local government shall identify:

(a) The name and title of the chief building code official;

(b) The name of the department;

(c) The official mailing address;

(d) The phone number;

(e) The fax number; and

(f) The e-mail address, if applicable.

(7) Inclusions and exclusions.

(a) A local government's petition for expanded jurisdiction shall include:

1. A complete list of each building occupancy classification and size for which expanded jurisdiction is requested; ~~and~~

2. A complete list of each building occupancy classification and size for which expanded jurisdiction is not requested; ~~and~~ [-]

3. A copy of the local ordinance requiring single family dwelling plan review and inspection or a statement to the effect that the local government elects not to regulate them.

(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing by the local government and the department.

(8) State jurisdiction. The department shall retain plan review, inspection and enforcement responsibility under the Kentucky Building Code for all buildings which are:

(a) Institutional buildings;

(b) Educational buildings or other facilities required to be licensed by the Cabinet for Families and Children or Cabinet for Health Services, including day care centers, hospitals, nursing homes or other similar facilities;

(c) State-owned or leased buildings and facilities;

(d) High-hazard occupancies, unless specifically agreed in writing by the local government and the department; and

(e) Industrialized building systems (including modular homes) except for site placement and assembly of modular homes which may be permitted locally upon notification from the department for each instance.

Section 2. Procedures for Maintaining Expanded Jurisdiction. (1) The department shall monitor the program of local governments that have been granted additional responsibility. If the local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, any terms of their agreement or KRS Chapter 198B, the department may cancel the agreement, rescind the expanded jurisdiction and preempt the local program in its entirety, upon approval of the board.

(2) Each agreement for expanded jurisdiction shall be in effect for

three (3) years, unless canceled:

- (a) By agreement of the parties in writing; or
- (b) Pursuant to subsection (1) of this section.
- (3) The local government shall notify the department, within thirty (30) days of any changes in personnel or fees during the contract period.
- (4) Before the expiration of the three (3) year agreement for expanded jurisdiction, the department shall reevaluate the building code enforcement program of the local government and make a recommendation to the board regarding continuation of the expanded jurisdiction and renewal of the agreement. Upon approval of the board and the local government, the department shall renew its agreement for another three (3) years.

Section 3. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government [it] shall send a written notice to the department, which shall:

- (a) Identify the names of each member and their technical qualifications for being appointed to the appeals board; and
- (b) Include the method for contacting the local appeals board.
- (3) If there is not a local appeals board, all costs incurred in processing the appeal shall be charged to the local government for each appeal filed pursuant to KRS 198B.070(5).

Section 4. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection of the construction of one (1) and two (2) family dwellings that are:

- (a) Manufactured homes;
- (b) Modular homes; or
- (c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 5. Local Government Fees Schedule. (1) The local fees authorized by KRS 198B.060(18) [(+2)], established for construction projects which continue under state jurisdiction, shall be adjusted to reflect that plan review or inspection functions will not be provided by the local government.

(2) Each local government's petition for expanded jurisdiction shall include a copy of the schedule of fees as adopted by the local legislative body.

Section 6. Incorporation by Reference. (1) Form BCE/EJ #1, Application for Local Expanded Jurisdiction, October 2000, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to [and] 4:30 p.m.

JUDITH G. WALDEN, Office of General Counsel
DENNIS J. LANGFORD, Commissioner
RONALD MCCLOUD, Secretary

APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 13, 2000 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, December 12, 2000)

902 KAR 17:040. Data reporting by health care providers.

RELATES TO: KRS 216.2920 [216.2921] to 216.2929
STATUTORY AUTHORITY: KRS 216.2925[-EO 96-862]
NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human

Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 216.2925 mandates the Cabinet for Health Services to promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation establishes [sets forth] the data elements, forms, and time-tables the cabinet requires to carry out this mandate.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the cabinet to collect, edit or analyze data from providers.

(2) "Ambulatory surgeries" mean surgeries performed on an ambulatory or outpatient basis in a hospital or freestanding ambulatory surgery center, in accordance with Section 2(2)(b) of this administrative regulation. [identified by the procedure codes listed below. Emergency room visits shall be included only if the patient had a surgical procedure as listed below, and utilized a surgical suite (including endoscopy rooms). If the procedure was done in the emergency room, and not a surgical suite, the patient record should not be submitted. The required ambulatory surgery procedure codes are as follows:

| ICD-9-CM Procedure Codes |
|--------------------------|
| 01.00 through 86.99 |
| 87.37 (mammography) |
| 88.40 through 88.60 |
| 98.50 through 98.59] |

(3) "Cabinet" means the Cabinet for Health Services or its agent.

(4) "Coding and transmission specifications" or "UB-92 Submission Manual" means the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions[-as incorporated by reference in Section 10 of this administrative regulation].

(5) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and identified by a provider-assigned patient control number unique to that inpatient episode, and shall not include [-Excluded from this definition are] inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds, hospice, and major ambulatory surgeries notwithstanding that these may occur in hospitals.

(6) "Provider" means a hospital, ambulatory facility, clinic or other entity of any nature providing hospitalizations, mammograms or ambulatory surgeries [as defined in this administrative regulation].

(7) "Record" means the documentation of a hospitalization or ambulatory surgery in the format of a UB-92 whether constituted as a paper form or on a computer readable electronic medium.

(8) "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and ambulatory encounters. ["Cabinet" means the Cabinet for Health Services.

(2) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode. Excluded from this definition are inpatient services a hospital may provide in swing, dual licensed, nursing facility, skilled, intermediate or personal care beds, hospice, and major ambulatory procedures notwithstanding that these may occur in hospitals.

(3) "Selected ambulatory surgery" means the following specific surgeries:

| | |
|------------------------|---|
| Dilation and curettage | Myringotomy with or without ventilation tubes |
| Hernia repair | Colonoscopy |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | |
|---|---|
| Gastrosocopy | Cystoscopy with or without retrograde urography |
| Bronchoscopy | Tubal ligation |
| Vasectomy | Cataract surgery |
| Laser surgery (eye) | Arthroscopy |
| Angioplasty | Septoplasty |
| Hemorrhoid surgery | Lymph node biopsy |
| Golposcopy with or without conization | Breast biopsy |
| Laparoscopic cholecystectomy | Carpal tunnel release |
| Arteriogram with or without angioplasty | Tonsillectomy |

(4) "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and ambulatory encounters, as incorporated by reference in Section 9 of this administrative regulation.

(5) "HCFA-1500" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1500, approved by the American Medical Association Council on Medical Service and commonly used to bill for ambulatory patient encounters, as incorporated by reference in Section 9 of this administrative regulation.

(6) "Coding and transmission specifications" means the technical directives the cabinet issues concerning technical and technological matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and HCFA-1500 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(7) "Record" means the documentation of a hospitalization or major ambulatory procedure in the format of a UB-92 or HCFA-1500 regardless whether constituted as a paper form or on a computer readable electronic medium.

(8) "Agent" means any entity with which the cabinet may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the cabinet to collect, edit or analyze data from providers.

(9) "Provider" means a hospital, ambulatory facility, physician office, clinic or other entity of any nature providing hospitalizations or major ambulatory procedures as defined in this administrative regulation.

Section 2. Data Collection. (1) Hospitalization records. [Beginning January 1, 1995,] Hospitals shall document on a UB-92 record a [each] hospitalization they provide, and shall, from every record, copy and provide to the cabinet [or its agent] not less than the data specified in Section 9 [7] of this administrative regulation.

(2) Ambulatory surgeries and mammography records.

(a) Hospitals. [(a) Beginning January 1, 1995, ambulatory facilities and hospitals providing ambulatory surgeries or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the cabinet, every ambulatory surgery and mammogram they provide, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(b) Beginning July 1, 1995, physician offices, clinics, ambulatory facilities and other entities of any nature providing [major] ambulatory surgeries or mammograms shall document on a UB-92 [or HCFA-1500] record, [as designated by the cabinet,] the [major] ambulatory surgeries [procedures] and mammograms they provide, as defined in Section 1 of this administrative regulation, [except that reporting of surgeries shall be limited to selected ambulatory surgeries as defined in this administrative regulation,] and shall, from every record, copy and provide to the cabinet [or its agent] not less than the data specified in Section 9 [7] of this administrative regulation.

(b)1. An emergency room visit shall be included as an ambulatory surgery if the patient:

a. Had a surgical procedure listed in paragraph (c) of this subsection; and

b. Utilized a surgical suite (including endoscopy rooms).

2. If the procedure was done in the emergency room, and not a surgical suite, the patient record shall not be submitted.

(c) The required ambulatory surgery procedure codes shall be as follows:

| ICD-9-CM Procedure Codes |
|----------------------------|
| 01.00 through 86.99 |
| 87.37 (mammography) |
| 88.40 through 88.60 |
| 98.50 through 98.59 |

(3) Data collection on [all] patients. Providers shall submit [all] required data on every patient as provided in Section 9 of this administrative regulation, [regardless] whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the cabinet [or its agent] as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the cabinet [or its agent] before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility.

(a) If [When] a patient is served by a mobile health service, specialized medical technology service, or another situation [other situations] where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet [or its agent] shall reside with the entity that bills for the service or [otherwise] would do so if [in the event] a service is unbilled.

(b) [All] Charges for physician services occurring within a hospital shall be reported to the cabinet. Responsibility for reporting the physician charge data shall rest with the hospital if [only when] the physician is an employee of the hospital. A [Any] physician charge [charge(s)] contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating them with other hospital records that do not contain any physician charges.

(3) Transmission of records.

(a) Records [Data] submitted to the cabinet [or its agent] shall be uniformly completed and formatted according to coding and transmission specifications issued by the cabinet.

(b) Hospitals shall submit records [data] on computer-readable electronic media, and [all] other providers with capability to submit records on computer-readable electronic media shall do so.

(c) [All] Providers shall provide back-up security against accidental erasure or loss of the data until incomplete or inaccurate records identified by the cabinet, if any, have been corrected and resubmitted.

(d) A [Any] provider who submits records in the form of paper copies shall [either] deliver the copies to the cabinet [or its agent], or send them in secure packaging by mail postmarked no later than the due date established in Section 4 of this administrative regulation.

(e) [(f)] Personal identification fields including the patient's name, Social Security number, street address and four (4) digit zip code suffix if any (but not city or five (5) digit zip code) shall be rendered unreadable on paper copies before the copies are submitted to the cabinet, and shall not be included with electronically submitted data.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of [all] data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet [or its agent] shall periodically, by electronic message or mail, verify to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a [any] discrepancy between the provider's date log and a verification notice.

Section 4. Data Submission Timetable. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A

quarterly submission shall:

(a) Contain data, ~~[from all records of patients admitted on or after January 1, 1995,]~~ which during that quarter became final as specified in Section 3(1) of this administrative regulation; ~~;~~ and

(b) ~~[shall]~~ Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. ~~[(a)]~~ If the 45th day falls on a weekend or holiday, the submission due date shall become the next following working day.

2. ~~[(b)]~~ Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

~~[(c) The date for the first required data submission under this administrative regulation shall be, for quarterly data collected after January 1, 1995, sixty (60) days following official release of the cabinet's coding and transmission specifications.]~~

(2) Submissions more frequent than quarterly. Providers may submit data ~~[at any time]~~ after records become final as specified in Section 3(1) of this administrative regulation, and at a ~~[any]~~ frequency a ~~[each]~~ provider deems convenient for accumulating and submitting batch data.

Section 5. Data Corrections. (1) Editing. ~~[All]~~ Data received by the cabinet ~~shall~~ ~~[or its agent will]~~ upon receipt be edited to ensure completeness and validity of the data for further processing. Computer editing routines ~~shall~~ ~~[will]~~ identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications.

(2) Time permitted for corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet ~~[or its agent]~~ identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by ~~[either]~~ electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the cabinet ~~[or its agent]~~ shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications.

~~[(d) [During the start-up months between January 1, 1995 and September 30, 1995,] The cabinet shall [may in its discretion] grant a provider an extension of time to submit corrections, if [provided that] the provider has formally informed the cabinet of significant problems in performing the corrections and has formally requested, in writing, an extension of time beyond the thirty (30) day limit.~~

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet ~~[or its agent]~~ shall identify and return to the provider for correction every record in which ~~[any]~~ one (1) or more required data elements fails to pass the edit. ~~[, and shall count the total number of required data elements returned to be corrected as 100 percent of the data elements for that submission subject to correction by the provider. Upon written request of the provider, the cabinet or its agent will identify and return to the provider a report of all records having errors, including those that pass the percentage error threshold.]~~

(b) When editing data that a provider has submitted, the cabinet ~~[or its agent]~~ shall check for an error rate in each field of zero percent ~~[no greater than two (2) percent of the total data elements].~~

(c) The cabinet may return for further correction ~~[correction(s)]~~ any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate of 100 [ninety-eight (98)] percent ~~[or greater]~~ in each field of the data elements.

(d) For the first data submission, the cabinet shall not count as errors any data for patients admitted prior to thirty (30) days following official release of coding and transmission specifications.

~~[(4)(a) Any change which constitutes an aggregate change of the originally submitted total charge by at least three (3) percent or \$500, whichever is greater, if a hospitalization; or ten (10) percent or \$100, whichever is greater, if an ambulatory encounter; or~~

~~(b) Any change of or addition to primary or secondary diagnoses or procedures.]~~

Section 6. Fines for Noncompliance. (1) A provider failing to meet quarterly submission guidelines as established [described] in Sec-

tions 4 and 5 of this administrative regulation~~[-]~~ shall be assessed a fine of \$500 per violation.

(a) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the assessment of the fine and documentation of the reporting deficiency.

(b) A provider shall have thirty (30) days from the date of the notification letter, to pay the fine which shall be made payable to the Kentucky State Treasurer and returned by certified mail to the Kentucky Department for Public Health, Health Policy Development Branch, 275 East Main Street, HS 1E-B, Frankfort, Kentucky 40621.

(c) Fines during a calendar year shall not exceed \$1,500 per provider.

(2) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver, to be awarded in extreme cases only.

(b) Providers shall notify the Health Policy Development Branch on or before the last day of the data reporting period to receive an extension or waiver for that period.

(c) Extensions and waivers shall be extended to providers on a case-by-case basis, at the discretion of the cabinet and shall not exceed a continuous period of greater than six (6) months.

(d) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 7. Appeals. (1) A provider notified for noncompliance and assessed a fine pursuant to Section 6(1) of this administrative regulation shall have the right of appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, he shall appeal in writing to the Secretary of the Cabinet for Health Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary, or his designee, shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.110. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 8. Working Contacts. (1) ~~[Beginning January 20, 1995 and annually thereafter]~~ By January 1 of each calendar year, a ~~[, each]~~ provider ~~[who is]~~ required by this administrative regulation to submit data shall report by letter to the cabinet the names and telephone numbers of a designated working contact person and a back-up person to facilitate technical staff follow-up in dealing with daily working details by employees of the cabinet ~~[or its agent]~~.

(a) A provider's designated contact and back-up shall ~~[may]~~ not be the chief executive officer unless no other person ~~[person(s)]~~ employed by the provider has the requisite technical expertise.

(b) The designated working contact shall ~~[also]~~ be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 9. ~~[7:]~~ Required Data Elements. ~~[(+)]~~ UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the cabinet contains at least the following data elements as provided for on the UB-92 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications.

| FIELD # | DATA ELEMENT LABEL |
|---------|---|
| 3 | *Provider Assigned Patient Control Number |
| 4 | *Type of Bill (inpatient, outpatient or other) |
| 5 | *Federal Tax Number or Employer Identification Number (EIN) |
| 6 | *Statement Covers Period |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | |
|-------|--|
| 11 | Patient Birth Weight (state-reserved field) |
| 13 | *Patient City and Zip Code |
| 14 | *Patient Birth date |
| 15 | *Patient Sex |
| 16 | Patient Marital Status |
| 17 | *Admission/Start of Care Date |
| 18 | Admission Hour |
| 19 | *Type of Admission |
| 20 | *Source of Admission |
| 22 | *Patient Status (at end of service or discharge) |
| 23 | *Provider Assigned Medical Record Number |
| 32-35 | Occurrence Codes & Dates |
| 39-41 | Value Codes and Amounts |
| 42 | *Revenue Codes/Groups |
| 46 | Units of Service |
| 47 | *Total Charges by Revenue Code Category |
| 50 | *Payor Identification - Payor Name |
| 67 | *Principal Diagnosis Code |
| 68-75 | Secondary and Other Diagnosis Codes |
| 77 | External Cause of Injury Code (E-code) |
| 79 | *Procedure Coding Method Used |
| 80 | Principal Procedure Code & Date |
| 81 | Secondary and Other Procedure Codes & Date |
| 82 | *Attending Physician Unique Physician Identification Number (UPIN) or alternate number |
| 83 | Other Physician UPIN or alternate number |

[(2) HCFA-1500 data. Providers shall ensure that each copy of HCFA-1500 data submitted to the cabinet contains at least the following data elements as provided for on the HCFA-1500 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications:

| FIELD # | DATA ELEMENT LABEL |
|---------|---|
| 1 | * Payor Identification |
| 3 | * Patient Birth date and Patient Sex |
| 5 | * Patient City and Zip Code |
| 8 | Patient Marital Status |
| 10a | Patient Condition Related to Employment |
| 10b | Patient Condition Related to Auto Accident |
| 10c | Patient Condition Related to Other Accident |
| 14 | * Date of Current Illness, Injury, or Pregnancy |
| 15 | First Date of Previous Same/Similar Illness |
| 17a | * Referring/Ordering Physician UPIN or alternate number |
| 18 | Hospitalization Dates Related to Current Services |
| 19 | * Ethnicity |
| 20 | Outside Lab Use & Charges |
| 21 | * Diagnosis or Nature of Illness or Injury |
| 24a | * Date(s) of Each Procedure/Service/Supply |
| 24b | * Place of Service Code |
| 24d | * GPT/HGPGS Code for Each Procedure/Service/Supply |
| 24e | Diagnosis Code |
| 24f | * Dollar Charges for Each Procedure/Service/Supply |
| 24g | * Number of Days or Units |
| 25 | * Provider's (Physician/Supplier) Federal Tax Identification Number (EIN) |
| 26 | * Provider (Physician/Supplier)-assigned Patient Account Number |
| 28 | * Total Charges for Services] |

Section 10. [8:] Incorporation by Reference. (1) **The following material is incorporated by reference:**

(a) [As defined in Section 1 of this administrative regulation,] Form UB-92, August 2000; and

(b) UB-92 Submission Manual, November 1999. [is [and Form HCFA-1500 are] incorporated by reference.]

(2) This material [These forms] may be inspected, [or] copied, or obtained, subject to applicable copyright law, at the Cabinet for Health

Services, 275 East Main Street, Frankfort, Kentucky, 40601, Monday through Friday, [from] 8 a.m. to 4:30 p.m.[- Monday through Friday except holidays-]

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 3, 2000

FILED WITH LRC: October 4, 2000 at 1 p.m.

**CABINET FOR HEALTH SERVICES
Department for Mental Health/Mental Retardation Services
Division for Administration
(As Amended at ARRS, December 12, 2000)**

908 KAR 3:050. Per diem rate pursuant to KRS 210.710 to 210.760.

RELATES TO: KRS 210.710, 210.720, 210.730 [210.700 to 210.760]

STATUTORY AUTHORITY: KRS 194A.030(5), 194A.050(1), 210.720(2), 210.750[-210.760]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) **requires** [directs] [requires] the Secretary of the Cabinet for Health Services to establish the patient cost per day for board, maintenance and treatment for a [each] facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 [194A.050] [210.750] authorizes the secretary to promulgate administrative regulations **to implement KRS 210.700 to 210.760, the Patient Liability Act of 1978**. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. **Facility Rates. (1) Facilities operated by the cabinet** [Facilities with an All-inclusive Per Diem Rate. The following facility shall charge an all-inclusive per diem rate for room and board and ancillary services. Physician services shall be charged on an individual basis as utilized:

| Facility | Rate |
|------------------------|-------|
| Eastern State Hospital | \$450 |

Section 2. **Facilities with a Routine Service Charge Per Diem with Separate Charges for Treatment Services on an Individual Basis. (1)** The following facilities] shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided. **The per diem rate for room and board for each facility shall be as follows:**

| Facility | Rate |
|--------------------------------|------------------------|
| Central State Hospital | \$455 [400] |
| Central State - ICF/MR | 395 [385] |
| Western State Hospital | 375 |
| Western State Nursing Facility | 160 [155] |
| Outwood ICF/MR | 200 |
| Oakwood | <u>243</u> [205] [200] |
| Hazelwood Center | 280 [260] |
| Glasgow State Nursing Facility | 200 [160] |
| Del Maria | 425 [375] |
| Meadows | 410 [325] |
| Windsong | <u>365</u> [310] |
| Volta House | 125 |

(2) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section:

- (a) Physicians services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;

- (g) Laboratory;
- (h) Speech therapy;
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia; and
- (n) Electroshock therapy.

Section 2. [3.] Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be fixed using the last available audited third party cost report increased for inflation. Current rates shall be posted at each facility.

MARGARET PENNINGTON, Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: October 4, 2000
FILED WITH LRC: October 4, 2000 at 1 p.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, December 12, 2000)

922 KAR 1:360. Private child care placement [placements], levels of care, and payment.

RELATES TO: KRS 199.640-199.670, 199.801, 209.020(2), 605.090, 610.110

STATUTORY AUTHORITY: KRS 194B.050(1), [194.050(1); 199.641, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.641 authorizes the cabinet to establish the rate of reimbursement for child-caring facilities, [that which is] consistent with the level of service provided. [Reimbursement for a child placed in out-of-home care by a child-placing agency shall be consistent with the rate paid to a child-caring facility and based on the level of quality of service provided.] [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children.] This administrative regulation establishes a five (5) level reimbursement system based on the needs of the child with a reimbursement rate for each level. The function of this administrative regulation shall be to establish procedures whereby a [each] child shall be evaluated to assure classification in the appropriate level of care.

Section 1. Definitions. (1) "Cabinet" is defined at KRS 209.020(2).

(2) "Commissioner" means the Commissioner [or designee] of the Department for Community Based Services or the commissioner's designee.

(3) [(2)] "Department" is defined at [means the Department for Community-Based Services as defined in] KRS 199.641(1)(c).

(4) "District placement coordinator" is defined at KRS 199.801(1).

(5) [(3)] "Gatekeeper" means the department or agent responsible for making a clinical determination of the level of care necessary to meet a child's treatment and service needs.

(6) [(5)] "Index factor" means a specific number [describes a calculation] derived from time-study data that is used as part of the cabinet's payment methodology to:

(a) Determine the appropriate payment increment for each level of care; and

(b) Fairly compensate private child-caring facilities based on the time spent providing treatment services.

(7) [(6)] "Model program cost analysis" is defined at KRS 199.641(1)(d).

[(7)] "Placement coordinator" means a state employee or an employee of a contracted entity who is located in each of the department's service regions pursuant to KRS 199.801 to determine and expedite the placement of a child who is in the custody of the cabinet.]

(8) [(4)] "Referral packet" means the required forms to be submitted

to the gatekeeper and to a private child care provider, [providers] to determine level of care and placement. It [and] contains the following forms:

(a) OOH-886 [DSS-886], Private Child Care Client Inter-Agency Referral;

(b) OOH-886A [DSS-886A], Application for Referral to Private Child Care; and

(c) Achenbach Child Behavior Checklist for a child whose IQ is seventy (70) or above; or

(d) A comparable instrument identified by the cabinet or gatekeeper for a child whose IQ is below seventy (70).

(9) "Time study" is defined at KRS 199.641(1)(e). [means the process of reporting work performed by an employee of a child-caring facility and child-placing agency pursuant to KRS 199.641.]

(10) [; and, if a child has been assessed for youth services:

(5)] "Utilization review" means an examination of a [during a child's placement the] [each] child's case record [records] and existing documentation performed during the placement process, in order to:

(a) [shall be examined to] Identify the child's current level of functioning; and

(b) Assign the appropriate level of care.

Section 2. Payment Methodology for Private Child-caring Facilities. (1) A per diem rate for the care of a child placed by the cabinet in a private child-caring facility shall be established by using the model program cost analysis defined at KRS 199.641.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined. The factor shall be determined as follows:

(a) Based on the amount of treatment provided at each level of care; and

(b) By determining the median of:

1. Number of daily treatment hours, derived from time study data, provided to children served by private child-caring facilities; and

2. Level of care of children served by private child-caring facilities that contract with the cabinet.

3. The median number of daily treatment hours for children whose level is:

a. Considered the median level of care shall be represented by an index factor of one (1); and

b. Not considered the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to a child in the median level.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Median cost calculation shall be composed of:

(a) For a shelter with a treatment license: board, care, and treatment components, using a utilization factor of eighty (80) percent;

(b) For a shelter without a treatment license: board and care components, using a utilization factor of eighty (80) percent; and

(c) An adjustment for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6) An incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the facility. Measurable performance outcomes include:

(a) Child safety while in the care of a private child-caring facility;

(b) Child safety after reunification with the child's family;

(c) Adequate educational support;

(d) Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

- (e) Increased placement stability during the service period;
- (f) Increased achievement of permanency goals; and
- (g) Increased stability in permanency placement following planned discharge.

(7) The cabinet's contract with a private child-caring facility shall specify the:

- (a) Indicators used to measure the performance outcomes described in subsection (6) of this section; and
- (b) Target percentages used as performance goals.

(8) Each child in custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome specified in subsection (6) of this section.

(9) When the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom an outcome specified in subsection (6) of this section was achieved by the facility. A payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of facilities.

(10) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(11) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities to provide alternative services to children and their families. The alternative services:

- (a) Shall be geared toward improved outcomes;
- (b) Shall be tailored to fit the specific needs identified for the service region served by the facility;
- (c) Shall be available within the geographic area encompassed by the service region; and
- (d) May include case management responsibilities shared between the cabinet and the facility.

(12) The payment methodology for services described in subsection (11) of this section shall be based upon:

- (a) The model program cost analysis; and
- (b) Expectations agreed to by the facility, such as:
 1. Reduced length of stay in out of home placement;
 2. Increased safety from child abuse or neglect;
 3. Increased number of children moving into and remaining in permanent placement;
 4. Increased number of children cared for in close proximity to their home community;
 5. Increased number of children reunified with their families;
 6. Increased accountability for success in after care; and
 7. Decreased reentry into state custody.

Section 3. Levels of Care. The department shall establish a five (5) level reimbursement system based on the needs of a child in the custody of the cabinet. [The rate for [care. Rates of] each level of care is determined according to a model program cost analysis that is calculated by multiplying the median cost by the index factor for each level [were based upon the available Department for Community Based Service budget divided by the average number of children per day at each level].]

(1) The rate for Level I shall be forty-eight (48) dollars and nineteen (19) cents per day. A Level I child requires a routine home environment that:

- (a) Provides maintenance;
- (b) Provides guidance;
- (c) Provides supervision to meet the needs of the child; and
- (d) Ensures the emotional and physical well-being of the child.

(2) The rate for Level II shall be fifty-eight (58) dollars and fifty-two (52) cents per day. A Level II child:

- (a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and
- (b) Requires supervision in a structured supportive setting with:
 1. Counseling available from professional or paraprofessional staff;
 2. Educational support; and
 3. Services designed to improve development of normalized social skills.

(3) The rate for Level III shall be \$106.71 per day. A Level III child

may:

- (a) Engage in an occasional violent act;
 - (b) Have superficial or fragile interpersonal relationships;
 - (c) Require supervision in a structured, supportive environment where level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;
 - (d) Occasionally require intense levels of intervention to maintain the least restrictive environment; and
 - (e) Require a program that is flexible enough to allow:
 1. Extended trials of independence when the child is capable; and
 2. A period of corrective and protective structure during relapse.
- (4) The rate for Level IV shall be \$130.80 per day. A Level IV child:

- (a) Has physical and emotional needs;
 - (b) May be at moderate risk for causing harm to:
 1. Himself; or
 2. Others;
 - (c) Requires a structured supportive setting with:
 1. Therapeutic counseling available by professional staff; and
 2. Physical, environmental, and a treatment program designed to improve social, emotional, and educational adaptation behavior.
- (5) The rate for Level V shall be \$182.43 per day. A Level V child:
- (a) Has a severe:
 1. Impairment;
 2. Disability; or
 3. Need; or
 - (b) Is consistently unable or unwilling to cooperate in his own care;

or

- (c) Presents a severe risk of causing harm to:
 1. Himself; or
 2. Others; and
- (d) Requires Level IV services and programming and a:
 1. Highly structured program with twenty-four (24) hour supervision; or
 2. Specialized setting that can safely and effectively care for a severe and chronic medical condition complicated by a behavioral disorder or emotional disturbance. [Level I children require a routine home environment which provides maintenance, guidance and supervision to meet the needs of the child and ensures the emotional and physical well-being of the child. The rate for Level I shall be forty-one (41) dollars and sixty-three (63) cents per day.

(2) Level II children may engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships and require supervision in a structured supportive setting with counseling available from professional or paraprofessional staff, educational support, and services designed to improve developmental or normalized social skills. The rate for Level II shall be sixty (60) dollars and thirteen (13) cents per day.

(3) Level III children may engage in occasional violent acts and may have superficial or fragile interpersonal relationships and require supervision in a structured, supportive environment where level of supervision and support may vary from low to moderate proportional to the child's ability to handle reduced structure. These children may occasionally require intense levels of intervention to maintain the least restrictive environment and require a program which is flexible enough to allow both extended trials of independence when the child is capable and periods of corrective and protective structure during relapse. The rate for Level III shall be ninety-two (92) dollars and fifty (50) cents per day.

(4) Level IV children have both physical and emotional needs and may be at moderate risk for causing harm to themselves and others and require a structured supportive setting with therapeutic counseling available by professional staff and physical, environmental, and treatment programs designed to improve social, emotional, and educational adaptation behavior. The rate for Level IV shall be \$124.88 per day.

(5) Level V children require a highly structured program with twenty-four (24) hour supervision and a specialized setting which can safely and effectively care for severe and chronic medical conditions complicated by behavioral disorders or emotional disturbance. The rate for Level V shall be \$166.50 per day.]

Section 4. [3.] Emergency Shelter Care. (1) An emergency shelter

child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) Ninety-nine (99) dollars and eighty-seven (87) cents per day for a child-caring facility with a treatment license; and

(b) Eighty-seven (87) dollars and eighty-three (83) cents per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is **disrupted** [disrupts] and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care during the previous placement; or

(b) If the child is Level II or lower, receive a rate not less than ninety-nine (99) dollars and eighty-seven (87) cents per day; and

(c) Adhere to the child's treatment plan.

(3) If a cabinet social services worker determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the social services worker shall make a referral to the gatekeeper by the 20th day of placement, for assignment to an appropriate level of care. On the 31st day of continuous emergency shelter care, the emergency shelter child-caring facility with a treatment license shall:

(a) Receive a rate consistent with the assigned level of care for residential placement; and

(b) Adhere to the child's treatment plan.

Section 5. [4:] Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Twenty-one (21) dollars and ninety (90) cents per day for the child of an adolescent parent **who** [if the child] is committed to the cabinet.

Section 6. [5:] Foster Care. (1) A child placing agency providing foster care services shall receive a basic rate of forty (40) dollars per day.

(2) A child placing agency providing therapeutic foster care shall meet the requirements of 922 KAR 1:310, Sections 9 and 10. The rate for therapeutic foster care shall be based on the child's assigned level of care.

(3) The rate for Level I therapeutic foster care shall be seventy (70) dollars per day.

(4) The rate for Level II therapeutic foster care shall be seventy (70) dollars per day.

(5) The rate for Level III therapeutic foster care shall be seventy-six (76) dollars and seventy-eight (78) cents per day.

(6) The rate for Level IV therapeutic foster care shall be ninety-four (94) dollars and eleven (11) cents per day.

(7) The rate for Level V therapeutic foster care shall be \$131.26 per day.

Section 7. [6:] Role of the Gatekeeper. The gatekeeper shall be responsible for:

(1) Assessing each child-caring facility to determine what levels of care are provided;

(2) Evaluating a [each] child referred by the department or currently in a child-caring facility or child-placing agency placement to determine classification in the appropriate level of care;

(3) Reevaluating a [each] child within six (6) months after placement in a facility or child-placing agency placement, and every three (3) months thereafter if the child is in a private child care residential placement or every six (6) months thereafter if the child is in a foster care placement, at which time the child may be reassigned to another level of care or recommended for placement outside the level of care system;

(a) If a child is reassigned to a lower level by the gatekeeper and the child is remaining in the same child-caring facility or child-placing agency placement, the rate for the lower level of care shall be effective thirty (30) days from the date the utilization review was due [of the reassigned level]. If the child is placed in another child-caring facility, the rate for the lower level shall be effective on the day the child is placed; [-]

(b) If a child is reassigned to a higher level of care by the gatekeeper and the child is remaining in the same child-caring facility or child-placing agency placement, the rate for the higher level of care shall be effective the day after the materials for the utilization review are received by the gatekeeper or the day after the utilization due date, whichever is later [reassigned level is made]. If the child is placed in another child-caring facility or another child-placing agency placement, the rate shall be effective on the day the child is placed; [-]

(c) If, after the first six (6) months and before the next scheduled utilization review, the child-caring facility determines a child may be transitioned to a lower level of care, the rate for the current assigned level shall remain in effect until the next scheduled utilization review. If the lower level of care is therapeutic foster care, [independent living, or other alternative placement,] the facility shall notify the department; [-]

(d) If the child-caring facility determines a child is beyond the facility's or child-placing agency's capacity to provide care, or there is new information previously not considered by the gatekeeper, a request for a redetermination may be made to the gatekeeper prior to the next **regularly-scheduled** utilization review; [-]

1. After a redetermination is completed by the gatekeeper, the child-caring facility or child-placing agency and department shall be notified of the results; [-]

2. If the child-caring facility or child-placing agency disagrees with a redetermination made by the gatekeeper, a request for dispute resolution shall be submitted in writing to the department as governed by Section 9 [6] of this administrative regulation; [-]

(4) Monitoring each placement for quality assurance as part of the reevaluation for each child within six (6) months of the placement and every three (3) months thereafter for a [each] child in a private child care residential placement, or every six (6) months thereafter for a [each] child in a foster care placement. The gatekeeper shall:

(a) Review the extent to which services provided are in compliance with the child's treatment plan;

(b) Determine if a **change** [changes] in the child's needs are reflected in the child's treatment plan; and

(c) Advise the Division of Licensing and Regulation and the Cabinet for Families and Children of a discrepancy; [discrepancies; and]

(5) Maintain an information system for a child [children] served, **to include** [that [which] shall include, but not be limited to]:

(a) Placement history;

(b) Facility placement or child-placing agency placement;

(c) Cost of services;

(d) Length of treatment; and

(e) Discharge outcomes; and

(6) Monitoring each child-caring facility annually for quality assurance with:

(a) On-site record reviews;

(b) Interviews of residents and staff; and

(c) Satisfaction surveys of referring cabinet staff and parents.

Written reports shall be sent to the:

1. Child-caring facility; and

2. Cabinet.

Section 8. [7:] [4:] Provider Requirements. (1) The provider [Providers] in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305. The provider [1:300-Providers] shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program [1:300, Section 8, Youth treatment center], if providing intensive treatment oriented services.

(2) The provider shall demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for that child and shall include:

(a) Room and board, including [an] [any] activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services **including**:

1. [include] The evaluation and treatment of an emotional disorder [disorders], mental illness, or [and] substance abuse **problem**; and

2. Are directed to the identification and alleviation of **related** disability or distress[-related thereto], experienced by a child **who** [that] [which] follows a specific treatment plan [plans] targeted to **identify a problem** [identified problems]; and

(c) Support services **that** [which] [include]:

1. **Identify necessary resources and coordinate** [The identifi-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

ation of resources needed by a child and the coordination of] services provided by a range of agencies or professionals;

2. [~~Services that~~] [which] Allow a child to cope with the disability or distress;

3. [~~Services that~~] [which] Provide access to improving the educational or vocational status of the child; and

4. [~~Services that~~] [which] Provide essential elements of daily living.

Section 9. [9.] [5:] Referral Process. (1) When the social [family] service worker determines a need to place a child with a child-caring facility or child-placing agency, a referral packet shall be completed and a copy submitted to the gatekeeper.

(2) The gatekeeper shall, within three (3) working days of receipt of the packet:

(a) Determine the appropriate level of care needed, using a needs assessment consistent with one (1) of the five (5) levels of care; [-] and

(b) Return the completed OOHC-886 [DSS-886] Private Child Care Client Inter-Agency Referral Form, to the social [family] service worker [within three (3) working days of receipt of the referral packet].

(3) The social service worker shall [then] submit a copy of the completed referral packet with level assignment to the placement coordinator [pursuant to KRS 199.801], who shall forward the referral packet to potential child-caring and child-placing facilities [Upon notification of the assigned level of care, the family service worker shall forward the referral packet to potential child-caring facilities].

(4) If [Once] a child-caring facility accepts a child for placement, the social [family] service worker shall complete the OOHC-114 [DSS-114], Schedule of Payment, [herein incorporated by reference,] and on the prearranged date of placement, transport the child to the facility.

(5) On a quarterly [monthly] basis for a private child care residential placement or semiannual basis for a foster care placement, the child-caring facility or child-placing agency shall submit to the gatekeeper and social [family] service worker a copy of the child's record or a narrative summary including:

- (a) Information regarding the child's adjustment;
- (b) Services provided to both the child and family;
- (c) Progress made toward returning the child home; and
- (d) Future plans for the child.

Section 10. [9.] [6:] Dispute Resolution. A child-caring facility or child-placing agency may request [a dispute] resolution to a disputed determination made by the gatekeeper in the application of the provisions of this administrative regulation.

(1) A party wishing to dispute a determination shall submit a written notice of dispute [A written notice of dispute shall be submitted] to the service region administrator or designee [commissioner] within [no later than] thirty (30) days after a child-caring facility or child-placing agency is notified of a level of care determination. The notice of dispute shall:

- (a) Specify the action being disputed;
- (b) Specify the reasons the child-caring facility or child-placing agency believes the level of care determination is unwarranted;
- (c) Include documentation the child-caring facility or child-placing agency considers relevant to support the dispute; and
- (d) Specify an alternative determination or action [determinations or actions] that may be taken.

(2) The service region administrator or designee [commissioner] shall cause the dispute to be reviewed and evaluated and shall:

(a) Notify the facility or child-placing agency of the date, time and place for the informal conference within thirty (30) days of the receipt of the notice of dispute. The informal conference with the child-caring facility or child-placing agency shall be conducted according to the following procedures:

1. The service region administrator or designee [commissioner] shall preside over the informal conference with the child-caring facility or child-placing agency; [-]

2. The proceedings shall be recorded; [-]

3. The child-caring facility or child-placing agency or an authorized representative may present oral arguments or documentation [that] [which] are considered relevant to support the facility's contention regarding the assigned level of care; [-]

4. The department staff and the gatekeeper shall explain the department's decision regarding the assigned level of care; [-]

5. The service region administrator or designee [commissioner] may question each [a] participant [the participants] and may permit questions or discussions among participants if that may contribute to reaching a decision regarding the assigned level of care under dispute; and [-]

(b) Issue a written decision on the dispute, including findings [a finding] [findings] of fact and conclusions [a conclusion] [conclusions] of law, within [no later than] thirty (30) days after the informal conference.

Section 11. [10.] [7:] Administrative Hearing Process. If the child-caring facility disagrees with the service region administrator or designee's [commissioner's] decision on the dispute, the facility may apply for [has the right to] an administrative hearing held pursuant to [in accordance with] KRS Chapter 13B. The notice of hearing shall comply with KRS 13B.050.

Section 12. [11:] Incorporation [8-Material Incorporated] by Reference. (1) The following material is [forms are herein] incorporated by reference; [-]

(a) OOHC-114 [DSS-114], "Schedule of Payment", edition July 2000 [October 1997];

(b) OOHC-886 [DSS-886], "Private Child Care Client Interagency Referral Form", edition July 2000 [March 1996];

(c) OOHC-886A [DSS-886A], "Application for Referral to Private Child Care", edition July 2000 [September 1996];

(d) [DSS-1251A, "Child Placement History Log", Edition September 1996; and

(e)] "Achenbach Child Behavior Checklist (CBCL)", edition June 1999;

(e) "Cost Report for Child-Caring and Child-Placing Programs and Residential Facilities" and instructions for completion, edition May 1999;

(f) "Time Study Codes and Definitions" and instructions for time study, edition May 1999; and

(g) "Worker's One (1) Day Activity Log", edition May 1999 [January, 1995].

(2) This material [incorporated by reference] may be inspected, [and] copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, [6th Floor,] 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [- Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: October 13, 2000

FILED WITH LRC: October 13, 2000 at noon

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(Amended After Hearing)

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation **establishes** ~~[sets forth general]~~ definitions applicable to 11 KAR Chapter 16. ~~[This administrative regulation is not required by federal law or regulation.]~~

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalence under a trimester or quarter system at a postsecondary education institution.

(2) "Authority" is defined in KRS 164.740(1).

(3) **"Award year" means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.**

(4) "College" is defined in KRS 164.740(4).

(5) ~~[(4)]~~ "Early childhood facility" means a licensed Type I or a Type II day care facility **defined** ~~[described]~~ in 922 KAR 2:001 or a certified family child care home pursuant to KRS 199.8982(1)(c) and 922 KAR 2:100 that is located in Kentucky.

(6) ~~[(5)]~~ "ECDA" means Early Childhood Development Authority.

(7) ~~[(6)]~~ "ECDA-approved early childhood development credential" means the Child Development Associate's credential or a postsecondary, undergraduate degree, certificate or diploma that is:

(a) An associate or baccalaureate degree in interdisciplinary early childhood education, early childhood special education, early childhood development, or a related degree that is approved by request to the Early Childhood Development Authority;

(b) The Kentucky Early Childhood Development Trainer's Certificate; or

(c) The Kentucky Early Childhood Development Director's Certificate.

(8) ~~[(7)]~~ "Participating early childhood facility" means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:060 to early childhood development scholarship recipients employed by the facility.

(9) ~~[(8)]~~ "Participating educational institution" means a college or vocational school located in Kentucky that:

(a) Actively participates in the federal Pell Grant Program;

(b) ~~[-]~~ Offers a scholarship program curriculum;

(c) ~~[-]~~ Has a contract in force with the authority **relating** ~~[on such terms as the authority may deem necessary or appropriate]~~ to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority; and

(d)1. ~~[(a)]~~ Is publicly operated; or

2.a. ~~[(b)]~~ Is licensed by the Commonwealth of Kentucky;

b. ~~[-]~~ Has operated for at least ten (10) years;

c. ~~[-]~~ Offers a program of study not comprised solely of sectarian instruction; **and**

d. ~~[-and]~~ Admits as regular students only:

(i) ~~[-]~~ High school graduates;

(ii) ~~[-]~~ Recipients of a general equivalency diploma; or

(iii) ~~[-]~~ Students transferring from another accredited degree granting institution.~~[-]~~

(10) ~~[(9)]~~ "Professional development counselor" means an individual employed by a regional child-care resource and referral agency.

(11) ~~[(10)]~~ "Professional development funds" means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).

(12) ~~[(11)]~~ "Scholarship" means an Early Childhood Development Scholarship.

(13) ~~[(12)]~~ "Scholarship program curriculum" means an academic course or series of courses that does not lead to a certificate, diploma, or degree in theology, divinity, or religious education offered by a participating educational institution needed to obtain an ECDA-approved early childhood development credential.

(14) ~~[(13)]~~ "Vocational School" is defined in KRS 164.740(22).

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 5, 2000

FILED WITH LRC: December 6, 2000 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the definitions of terms used in the administration of the Early Childhood Development Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define or reference certain statutory definitions of terms commonly used in the administration of the Early Childhood Development Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations, after consultation with the Early Childhood Development Authority (ECDA) and the Cabinet for Families and Children, for the administration of the Early Childhood Development Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The benefits expected from this administrative regulation are the establishment of uniform meaning of commonly used terms in the administration of the Early Childhood Development Scholarship Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that during the first year of implementation of the Early Childhood Development Scholarship Program there will be 10 Professional Development Counselors, who will receive applications, verify the information contained on the applications and then relay the information to ECDA. During the second year of the Early Childhood Development Scholarship Program, it is estimated that the number of Professional Development Counselors will increase to 12. There will be approximately 200 students seeking a Child Development Associate Credential (CDA) during the first year of implementation of the Early Childhood Development Scholarship Programs and approximately 350 students seeking a CDA during the second year of implementation. There will be approximately 50 students seeking an Associates Degree in childhood development for the first year and 50 students during the second year. There will be an estimated 50 students seeking a baccalaureate degree in childhood development during the first year of implementation and an estimated 50 students during the second year. It is further estimated that 2,012 early childhood facilities will be eligible to participate in the Early Childhood Development Scholarship Program. There will be 14 participating post-

secondary institutions comprised of 5 private institutions, 8 public universities and the Kentucky Community and Technical College System (KCTCS) - involving 8 community colleges and 4 technical colleges operated by KCTCS. Finally, the Cabinet for Families and Children and the Early Childhood Development Authority (ECDA) will be affected by the Early Childhood Development Scholarship Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation merely defines terms commonly used in the administration of the Early Childhood Development Scholarship Program. Therefore, there will be no impact on the above-mentioned groups by this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation merely defines terms commonly used in the administration of the Early Childhood Development Scholarship Program. Therefore, there will be no costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: See paragraph (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the Early Childhood Development Scholarship Program shall come from money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the 40 settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, part XI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary for implementation of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(Amended After Hearing)

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

RELATES TO: KRS 164.518(9)

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. ~~[This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program. This administrative regulation is not required by federal law or regulation.]~~

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:

(a) Be:

1. A citizen, national, or permanent resident of the United States; ~~[and]~~

2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment; ~~[-]~~

3. ~~[(b)-Be]~~ Employed at least twenty (20) hours per week in a participating early childhood facility or provide training in early childhood development for an organization approved by the Office of Inspector General of the Cabinet for Health Services to offer the training;

4. ~~[(e)-Be]~~ Enrolled in no more than nine (9) credit hours per academic term in the scholarship program curriculum at a participating educational institution;

5. ~~[(d)-Be]~~ Pursuing an ECDA-approved early childhood development credential; ~~and~~

6. ~~Ineligible [(e)-Not be eligible]~~ to receive professional development funds from another education program; and

~~[(b) [(f)] Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause. [-]~~

(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:

(a) Meet the eligibility requirements of subsection (1) of this section; and

(b) Be making satisfactory academic progress toward the completion of the ECDA-approved early childhood development credential as determined by the participating institution.

(3) Appeal of determination.

(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECDA.

(b) A student shall submit a written statement of appeal to the ECDA within fifteen (15) calendar days after the date of notification of denial.

(c) The ECDA shall establish and make available to scholarship applicants written procedures for consideration of the student's appeal of the eligibility determination. The written procedures shall provide at a minimum:

1. That a hearing officer or committee appointed by ECDA shall consider the student's appeal and make a decision on the issues involved; ~~and~~

2. That the procedures shall ensure due process to the student, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel.

(4) Commitment of service. A scholarship applicant shall commit that he shall subsequently render service:

(a) For six (6) months at the participating early childhood facility upon obtaining the child development associate certificate ~~[credential]~~, paid for in part by a scholarship; ~~[-]~~

(b) For one (1) year at the participating early childhood facility upon obtaining the early childhood development credential of an associate degree ~~[or-certificate]~~, paid for in part by a scholarship; or ~~[and]~~

(c) For six (6) months at the participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood development credential of a baccalaureate degree, paid for in part by a scholarship.

Section 2. Application. (1) Prior to the beginning of each academic term, a person seeking an early childhood development scholarship shall obtain an Early Childhood Development Scholarship Application ~~[identified in Section 5 of this administrative regulation]~~ from a childcare resource and referral agency, the ECDA, or the authority. The applicant shall complete and sign the application.

(2) The applicant shall ensure that the completed application is certified by an authorized representative of the participating early childhood facility and that the completed application is received by the professional development counselor on or before:

(a) July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested; ~~[or]~~

(b) November 15, or the next regular business day if November 15

falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) March 15, or the next regular business day if March 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:

(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is received by the professional development counselor.

(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

(3) The professional development counselor shall forward to the ECDA the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECDA on or before:

(a) August 1, or the next regular business day if August 1 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested; [or]

(b) December 1, or the next regular business day if December 1 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or

(c) April 1, or the next regular business day if April 1 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

(4) ECDA shall approve the eligibility determination and compile a list of approved applicants and sort the list of applicants by the participating educational institution and academic term for which the scholarship is awarded and shall submit the list with the following information to the authority:

(a) The name and Social Security number of the applicant approved to receive a scholarship;

(b) The award amount for each eligible student to be disbursed by the authority; and

(c) The total number of eligible students and total amount of awards.

Section 4. (1) Award amount [Maximum]. The scholarship amount awarded to an eligible applicant for an academic term shall be the lesser of:

(a) [(1)] The amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status; or

(b) [(2)] The highest [prevailing] amount charged [per credit hour] for undergraduate tuition for the academic term to attend publicly [community colleges] operated colleges and universities in Kentucky based on the recipient's enrollment status [by the Kentucky Community and Technical College System or the prevailing amount charged per credit hour for tuition to attend technical colleges operated by the Kentucky Community and Technical College System, whichever is higher].

(2) Award maximum. The maximum scholarship amount awarded to an eligible applicant for an award year shall be \$1,400.

Section 5. Incorporation by Reference. (1) The Early Childhood Development Scholarship Application, December 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 5, 2000

FILED WITH LRC: December 6, 2000 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for selection of scholarship recipients pertaining to administration of the Early Childhood Development Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process and criteria for selection of recipients of scholarships under the Early Childhood Development Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority to promulgate administrative regulations, after consultation with the Early Childhood Development Authority (ECDA) and the Cabinet for Families and Children, for the administration of the Early Childhood Development Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishment of the process and criteria for selection of scholarship recipients in the administration of the Early Childhood Development Scholarship Program will ensure that funds are only provided to eligible individuals and that the selection of recipients is made by the ECDA, which is in the best position to assess the recipient's qualifications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that during the first year of implementation of the Early Childhood Development Scholarship Program there will be 10 professional development counselors, who will receive applications, verify the information contained on the applications and then relay the information to ECDA. During the second year of the Early Childhood Development Scholarship Program, it is estimated that the number of professional development counselors will increase to 12. There will be approximately 200 students seeking a child development associate credential (CDA) during the first year of implementation of the Early Childhood Development Scholarship Programs and approximately 350 students seeking a CDA during the second year of implementation. There will be approximately 50 students seeking an Associates Degree in childhood development for the first year and 50 students during the second year. There will be an estimated 50 students seeking a baccalaureate degree in childhood development during the first year of implementation and an estimated 50 students during the second year. It is further estimated that 2,012 early childhood facilities will be eligible to participate in the Early Childhood Development Scholarship Program. There will be 14 participating post-secondary institutions comprised of 5 private institutions, 8 public universities and the Kentucky Community and Technical College System (KCTCS) - involving 8 community colleges and 4 technical colleges operated by KCTCS. Finally, the Cabinet for Families and Children and the Early Childhood Development Authority (ECDA) will be affected by the Early Childhood Development Scholarship Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The Early Childhood Development Scholarship Program and its accompanying administrative regulations will provide financial assistance to individuals seeking professional development training for teachers in an early childhood setting. The effect of this administrative regulation on the

early childhood facilities will involve the burden of certifying eligible applicants for the program. This administrative regulation will impact the professional development counselor by imposing the burden of processing Early Childhood Development Scholarship applications and making a recommendation of scholarship awards to the ECDA. The ECDA, in turn, will be required to approve the applications and submit a list of recipients along with the award amount for each recipient to the authority for disbursement.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Pursuant to 2000 Ky. Acts ch. 549, \$600,000 in federal funds was appropriated for fiscal year 2001 to be used to employ professional development counselors and pay monetary incentives to scholarship recipients pursuant to 11 KAR 16:060. \$1,400,000 was appropriated from money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the 40 settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, part XI for use in awarding scholarships. Of this latter amount, costs of approximately \$58,000 is anticipated to be incurred by the authority for implementation and administration of the scholarship program.

(b) On a continuing basis: Pursuant to 2000 Ky. Acts ch. 549, \$700,000 in federal funds was appropriated for fiscal year 2002 to be used to employ professional development counselors and pay monetary incentives to scholarship recipients pursuant to 11 KAR 16:060. \$1,409,500 was appropriated from money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the 40 settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, part XI for use in awarding scholarships. Of this latter amount, costs of approximately \$58,000 or less is anticipated to be incurred by the authority for implementation and administration of the scholarship program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the Early Childhood Development Scholarship Program shall come from money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the 40 settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, part XI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary for implementation of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(Amended After Hearing)

11 KAR 16:020. Early Childhood Development Scholarship Program disbursement process.

RELATES TO: **KRS 164.518** [2000 Ky. Acts ch. 308, sec. 13(3)]
 STATUTORY AUTHORITY: **KRS 164.518(3)**, 164.748(4) [2000

Ky. Acts ch. 308, sec. 13(3)]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 164.518(3)** [2000 Ky. Acts ch. 308, sec. 13(3)] requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes procedures for disbursement of the monies awarded under the Early Childhood Development Scholarship Program. [This administrative regulation is not required by federal law or regulation.]

Section 1. Disbursement Process. (1) Within thirty (30) days following receipt by the authority of the information required by [in] 11 KAR 16:010, Section 3(4), the authority shall remit monies awarded under the Early Childhood Development Scholarship Program by electronic funds transfer delivered to the participating institution on behalf of the scholarship recipient for subsequent delivery to the eligible scholarship recipient.

(2) The authority shall send to the participating educational institution a disbursement roster indicating each recipient's name, Social Security number, and scholarship amount.

(3) The participating educational institution shall hold the funds solely for the benefit of the scholarship recipient and the authority until the student has registered for classes for the academic term for which the scholarship is awarded.

(4)(a) Scholarship proceeds shall be used by the recipient only for payment of tuition to the participating educational institution.

(b) Upon the scholarship recipient's registration, the participating educational institution shall:

1. Credit the scholarship recipient's account; and

2. Notify the recipient in writing that it has [so] credited the [that] account[, and deliver to the recipient any early childhood development scholarship proceeds that exceed the amount the recipient owes to the participating educational institution for tuition].

(c) The participating institution shall return to the authority scholarship funds that exceed the amount of tuition charged by the institution to the scholarship recipient for the academic term based upon the recipient's enrollment status at the time of registration.

(d) The authority may, without precluding other remedies provided in 11 KAR 4:020, recover from the participating institution scholarship funds not returned pursuant to paragraph (c) of this subsection by setoff against any other funds payable to the participating institution by the authority.

Section 2. Disbursement Roster (1) The participating educational institution shall indicate the following on the disbursement roster:

(a) The date funds were either credited to the scholarship recipient's account or disbursed to the recipient;

(b) The name of a recipient for whom funds are being returned;

(c) The amount being returned; and

(d) The reason funds are being returned.

(2) The participating educational institution shall return to the authority, according to instructions attached to the roster, all funds advanced that remain undisbursed to students who were awarded scholarships. The participating institution shall retain a copy of the disbursement roster for its records. The participating educational institution shall return the undisbursed scholarship funds to the authority by electronic funds transfer.

(3) The instructions accompanying the disbursement roster shall specify:

(a) Conditions under which the scholarship shall be disbursed to the benefit of the scholarship recipient;

(b) Conditions under which the scholarship funds shall be returned to the authority; and

(c) The date by which the roster and any undisbursed funds shall be returned to the authority.

(4) A participating educational institution that has not returned a disbursement roster or completed it according to the instructions shall not receive additional scholarship funds until it has complied with the instructions identified in subsection (3) of this section. The authority may withhold any services and funds from the educational institution from the due date until the roster and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 3. Misdelivery of Funds. The participating institution shall be liable to the authority for delivery of scholarship funds to the wrong person or to an ineligible student and shall make restitution to the authority of an amount improperly delivered. Failure of the participating institution to make restitution as required shall, without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 5, 2000

FILED WITH LRC: December 6, 2000 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will establish the process for disbursement of scholarship funds for the benefit of recipients under the Early Childhood Development Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process for disbursement of scholarship funds under the Early Childhood Development Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2000 Ky. Acts ch. 308, sec. 13(3) requires the authority to promulgate administrative regulations, after consultation with the Early Childhood Development Authority (ECDA) and the Cabinet for Families and Children, for the administration of the Early Childhood Development Scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the Early Childhood Development Scholarship program by establishing a timely and cost effective process for the disbursement of scholarship funds for the benefits of recipients in the administration of the Early Childhood Development Scholarship program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation, but is a new administrative regulation. Therefore, this section does not apply.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation, but is a new administrative regulation. Therefore, this section does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation, but is a new administrative regulation. Therefore, this section does not apply.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation, but is a new administrative regulation. Therefore, this section does not apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that during the first year of implementation of the Early Childhood Development Scholarship Program there will be 10 professional development counselors, who will receive applications, verify the information contained on the applications and then relay the information to ECDA. During the second year of the Early Childhood Development Scholarship Program, it is estimated that the number of Professional Development Counselors will increase to 12. There will be approximately 200 students seeking a child development associate credential (CDA) during the first year of implementation of the Early Childhood Development Scholarship Programs and approximately 350 students seeking a CDA during the second year of implementation. There will be approximately 50 students seeking an Associates Degree in childhood development for the first year and 50 students during the second year. There will be an estimated 50 students seeking a baccalaureate degree in childhood development during

the first year of implementation and an estimated 50 students during the second year. It is further estimated that 2,012 early childhood facilities will be eligible to participate in the Early Childhood Development Scholarship Program. There will be 14 participating post-secondary institutions comprised of 5 private institutions, 8 public universities and the Kentucky Community and Technical College System (KCTCS) - involving 8 community colleges and 4 technical colleges operated by KCTCS. Finally, the Cabinet for Families and Children and the Early Childhood Development Authority (ECDA) will be affected by the Early Childhood Development Scholarship Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The Early Childhood Development Scholarship Program and its accompanying administrative regulations will provide financial assistance to individuals seeking professional development training for teachers, administrators and trainers in an early childhood setting. The postsecondary institutions will be effected by the time necessary to prepare for electronic fund transfer of scholarship proceeds from the authority and the completion and submission of disbursement rosters for those funds.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$1,400,000 was appropriated from money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the 40 settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, Part XI for use in awarding scholarships. Of this amount, costs of approximately \$58,000 is anticipated to be incurred by the authority for implementation and administration of the scholarship program. Direct costs to the authority would initially be those necessary to the programming of the authority's data processing system to update and store the essential information regarding the scholarship recipients and the administrative costs of developing the requirements of the program in consultation with the Early Childhood Development Authority. Thereafter, direct or indirect costs to the authority will result from electronic transmission of funds and disbursement rosters to the educational institutions. Costs to the educational institutions will be those associated with accepting electronic funds transfer of scholarship funds and the completion and submission of disbursement rosters.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the Early Childhood Development Scholarship Program shall come from money designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states and related federal legislation, as provided in 2000 Ky. Acts ch. 549, Part XI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary for implementation of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to this administrative regulation. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(Amended After Hearing)

11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients. [This administrative regulation is not required by federal law or regulation.]

Section 1. Textbook Expense Reimbursement. (1) The scholarship recipient shall present to his employer at the participating early childhood facility a receipt for the purchase of textbooks for the scholarship program curriculum. The scholarship recipient shall present the receipt to his employer not later than the end of the academic term to be eligible to receive a textbook expense reimbursement for the academic term.

(2) The participating early childhood facility shall, no later than fifteen (15) days after presentation of a receipt for textbook purchase, reimburse the scholarship recipient for the actual cost of the textbooks not to exceed fifty (50) dollars per academic term and \$150 per academic year.

(3) The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of reimbursement of scholarship recipients for textbooks.

Section 2. Related Educational Expense Reimbursement. (1) The scholarship recipient shall earn a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term to be eligible for reimbursement of related educational expenses.

(2) The scholarship recipient shall present to the professional development counselor no later than sixty (60) days following completion of the academic term an official grade report from the participating educational institution as evidence of completion of the scholarship program curriculum with a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term.

(3) The amount of the related educational expense reimbursement shall be:

(a) Fifty (50) dollars to a scholarship recipient pursuing a child development associate's credential; or [and]

(b) \$100 to a scholarship recipient pursuing an ECDA-approved early childhood development credential other than a child development associate's credential.

(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive reimbursement of related educational expenses associated with attendance at the participating educational institution, shall notify the scholarship recipient in writing of the determination of eligibility for the reimbursement of related educational expenses and the amount of the award.

(5)(a) After determination of eligibility, the professional development counselor shall transmit to the Department for Community Based Services in the Division of Child Care of the Cabinet for Families and Children a list of eligible recipients of reimbursement of related educational expenses. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and

2. The amount of the reimbursement of related educational expenses earned by the recipient.

(b) The Cabinet for Families and Children shall remit to the award recipient the earned reimbursement of related educational expenses specified in subsection (3) of this section [Section 2(3) of this administrative regulation].

Section 3. Milestone Achievement Award. (1) The scholarship recipient shall present to the professional development counselor and to the participating early childhood facility not later than sixty (60) days following completion of the academic term evidence of earning the ECDA-approved early childhood development credential to be eligible to receive a milestone achievement award.

(2) Evidence of earning the ECDA-approved early childhood development credential shall be:

(a) The certificate for the child development associate's credential; or [and]

(b) The diploma or official transcript from the participating educational institution for an ECDA-approved early childhood development credential other than a child development associate's credential.

(3) The milestone achievement award amount shall be:

(a) \$100 for earning a child development associate's credential;

(b) \$300 for earning an associate degree in interdisciplinary early childhood education, the Kentucky Early Childhood Development Trainer's Certificate, or the Kentucky Early Childhood Development Director's Certificate; or

(c) \$500 for earning a baccalaureate degree in interdisciplinary early childhood education.

(4) The professional development counselor, not later than thirty (30) days after considering whether the scholarship recipient is eligible to receive a milestone achievement award shall notify the scholarship recipient in writing of the determination of eligibility for the milestone achievement award and the amount of the award.

(5)(a) No later than fifteen (15) days following receipt of the document specified in subsection (2) of this section, the participating early childhood facility that employs the scholarship recipient at the time the scholarship recipient earns the ECDA-approved early childhood development credential shall remit to the scholarship recipient by certified check ten (10) percent of the earned milestone achievement award specified in subsection (3) of this section.

(b) The participating early childhood facility shall send to the professional development counselor a copy of the check as evidence that the participating early childhood facility has paid the scholarship recipient in accordance with paragraph (a) of this subsection.

(6)(a) After determination of eligibility and evidence of payment by the participating early childhood facility of the milestone achievement award, the professional development counselor shall transmit to the Department for Community Based Services in the Division of Child Care of the Cabinet for Families and Children a list of eligible recipients of the milestone achievement award. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and

2. The amount of the milestone achievement award earned by the recipient.

(b) The Cabinet for Families and Children shall remit to the award recipient ninety (90) percent of the earned milestone achievement award specified in subsection (3) of this section.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: December 5, 2000

FILED WITH LRC: December 6, 2000 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the mechanism and responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2000 Ky. Acts ch. 308, sec. 13(3) requires the authority to promulgate administrative regulations, after consultation with the Early Childhood Development Authority (ECDA) and the Cabinet for Families and Children, for the administration of the Early Childhood Development Scholarship Program, including a system of

monetary incentives for scholarship program participants for completing classes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the effective administration of the Early Childhood Development Scholarship Program by establishing the mechanism for payment of additional monetary incentives under the Early Childhood Development Scholarship Program for scholarship recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment to an existing administrative regulation. Therefore, this section is not applicable.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment to an existing administrative regulation. Therefore, this section is not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment to an existing administrative regulation. Therefore, this section is not applicable.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment to an existing administrative regulation. Therefore, this section is not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that during the first year of implementation of the Early Childhood Development Scholarship Program there will be 10 professional development counselors, who will receive applications, verify the information contained on the applications and then relay the information to ECDA. During the second year of the Early Childhood Development Scholarship Program, it is estimated that the number of Professional Development Counselors will increase to 12. There will be approximately 200 students seeking a child development associate credential (CDA) during the first year of implementation of the Early Childhood Development Scholarship Programs and approximately 350 students seeking a CDA during the second year of implementation. There will be approximately 50 students seeking an Associates Degree in childhood development for the first year and 50 students during the second year. There will be an estimated 50 students seeking a baccalaureate degree in childhood development during the first year of implementation and an estimated 50 students during the second year. It is further estimated that 2,012 early childhood facilities will be eligible to participate in the Early Childhood Development Scholarship Program. There will be 14 participating post-secondary institutions comprised of 5 private institutions, 8 public universities and the Kentucky Community and Technical College System (KCTCS) - involving 8 community colleges and 4 technical colleges operated by KCTCS. Finally, the Cabinet for Families and Children and the Early Childhood Development Authority (ECDA) will be affected by the Early Childhood Development Scholarship Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Early childhood facilities located throughout Kentucky and professional development counselors employed at Regional Child Care Resource and Referral Agencies will be responsible for administering a system of additional monetary incentives for scholarship recipients based on criteria and instructions established by KHEAA after consultation with ECDA.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The scholarship recipient shall present to the early childhood facility where he or she is employed receipts for purchase of textbooks. The early childhood facility is to then reimburse the scholarship recipient up to \$50 per academic term or \$150 per academic year for the purchase of textbooks. The scholarship recipient is also to present the professional development counselor with an official grade report. The professional development counselor will then remit to the scholarship recipient reimbursement for certain related educational expenses. The professional development counselor shall also admin-

ister the milestone achievement award following the scholarship recipient's completion of the ECDA-approved early childhood development credential. The Cabinet for Families and Children will fund 100% of the related educational expense reimbursement award and 90% of the milestone achievement award. Pursuant to 2000 Ky. Acts ch. 549, \$600,000 in federal funds was appropriated for fiscal year 2001 to be used to employ professional development counselors and pay monetary incentives to scholarship recipients. The participating early child care facilities that employ the scholarship recipient will fund 100% of the textbook reimbursement award and 10% of the milestone achievement award.

(b) On a continuing basis: Pursuant to 2000 Ky. Acts ch. 549, \$700,000 in federal funds was appropriated for fiscal year 2002 to be used to employ professional development counselors and pay monetary incentives to scholarship recipients.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The monetary incentives provided for under this administrative regulation will be funded as follows. 10% of the milestone achievement incentive will be funded by the early childhood facilities. The other 90% will be funded by a federal grant received by the Cabinet for Families and Children. Related educational expenses will be totally funded by the state from federal funds received as a grant by the Cabinet for Families and Children. The textbook reimbursement incentive will be funded entirely by the early childhood facilities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary for implementation of this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

COUNCIL ON POSTSECONDARY EDUCATION (Amended After Hearing)

13 KAR 1:030. Campus security.

RELATES TO: KRS 164.945 to 164.947, 227.200, 227.230

STATUTORY AUTHORITY: KRS 164.020(28), 164.948 to 164.949, 164.993 [2000 Ky. Acts ch. 190, p. 478]

NECESSITY, FUNCTION, AND CONFORMITY: The Michael Minger Act[, 2000 Ky. Acts Ch. 190, p. 478,] requires public postsecondary education institutions and those private postsecondary education institutions licensed by the Council on Postsecondary Education to report campus crimes to employees, [the] students and the public and to report annually to the Council on Postsecondary Education. The council has responsibility for developing formats for reporting crime statistics and for ensuring that annual reports are received from the institutions. The State Fire Marshal is granted access to the property of an institution that is covered by this act for [the purpose of] inspection, investigation, or any other action necessary to prevent fire loss or to determine the origin of any fire. This administrative regulation addresses the responsibilities of private, independent postsecondary education institutions licensed by the Council on Postsecondary Education.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Section 1. Definitions. (1) "Annual report" means the report submitted by an institution to the council that satisfies the requirements of KRS 164.9485 [2000-Ky. Acts ch. 190, p. 478, sec. 5].

(2) "Campus" is defined in KRS 164.948(1) [2000-Ky. Acts ch. 190, p. 478, sec. 1].

(3) "Campus crime log" means the daily log maintained by an institution and developed by the council consistent with the provisions of KRS 164.9481(1) [2000-Ky. Acts ch. 190, p. 478, sec. 2].

(4) "Campus security authority" is defined in KRS 164.948(2) [2000-Ky. Acts ch. 190, p. 478, sec. 5].

(5) "Clery Act" means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 USC 1092(f) and as implemented in 34 CFR 668.46.

(6) "Council" means the Council on Postsecondary Education as established by KRS 164.011.

(7) [(6)] "Crime" is defined in KRS 164.948(3) [2000-Ky. Acts ch. 190, p. 478, sec. 1(3)].

(8) "State [(7)] Fire Marshal" means the officer [State Fire Marshal as] described in KRS Chapter 227.

(9) [(8)] "Institution" means a private, independent postsecondary education institution as defined in KRS 164.948(4) [2000-Ky. Acts ch. 190, p. 478, sec. 1(4)].

Section 2. Property Included Under the Term Campus. (1) An institution shall, consistent with the provisions of KRS 164.948(1), [2000-Ky. Acts ch. 190, p. 478, sec. 1(1);] establish a list of all property:

- (a) Owned; or
- (b) Managed or controlled [; or
- (c) Controlled] by an institution.

(2) In establishing the list of property required in subsection (1) of this section, an institution shall use 34 CFR 668.46.

(3) [(a)] All property on the list shall be classified by one (1) of the categories listed in subsection (1) of this section:

(b) The list shall be updated as necessary but not less than annually.

(4) [(3)] Property controlled by an institution as set forth in KRS 164.948(1) [2000-Ky. Acts ch. 190, p. 478, sec. 1(1)] includes real property owned by groups that are[:

- (a) officially recognized by an institution[; and
- (b) For which the institution exercises some administrative control].

(5) [(4)] The list described in this section shall be available to the Council on Postsecondary Education if requested.

Section 3. Campus Crime Log. (1) An institution shall maintain a campus crime log as required by KRS 164.9481(1).

(2) Information contained in the campus crime log shall include all data elements required by KRS 164.9481(1).

(3) [Release of Information to the Public. (1) In satisfying the provisions of 2000-Ky. Acts ch. 190, p. 478, sec. 2(1)(b)1;] An institution shall develop and maintain a written policy that [is]:

(a) Ensures crime log information is available to the public as soon as possible, but no later than the time frame specified in KRS 164.9481(1)(b); and

(b) Is subject to the limitations established in KRS 164.9481(1). [2000-Ky. Acts ch. 190, p. 478, sec. 2(1)(b)1; and

(b) Designed to ensure that information is available to the public as soon as possible.]

(4) [(2)] The policy shall state that the institution shall not withhold information except as provided in KRS 164.9481(1) [set forth the conditions, subject to the limitations of subsection (1) of this section, under which that institution may withhold information on an incident].

(5) [(3)](a) An institution may archive campus crime log entries [information] after sixty (60) days have elapsed from the date when an incident report was reported.

(b) An institution that elects to archive campus crime log entries [information] as described in paragraph (a) of this subsection shall [have two (2) business days to] respond to information requests for material that has been archived within two (2) business days.

Section 4. Special Reports. An institution shall report, in writing, to

the council on how it shall comply with the provisions of KRS 164.9481(2) [2000-Ky. Acts ch. 190, p. 478, sec. 2(2)].

Section 5. [Campus Crime Log. (1) An institution shall maintain a campus crime log as required by 2000-Ky. Acts ch. 190, p. 478, sec. 2:

(2) Information contained in the campus crime log shall include all data elements contained in 2000-Ky. Acts ch. 190, p. 478, sec. 2(1).

Section 6. Crime. The meaning of a crime listed in KRS 164.948(3) shall be consistent, to the extent possible, with the definitions and standards established in the Uniform Crime Reporting System of the federal government, and with the Kentucky Revised Statutes, where appropriate. [2000-Ky. Acts ch. 190, p. 478, sec. 1(3) shall be as set forth in the Kentucky Revised Statutes, and, to the extent possible, shall be consistent with the Uniform Crime Reporting System of the federal government.]

Section 6. [7:] State Fire Marshal and Threat of Fire. (1) A threat of fire includes:

(a) All fire alarms except as provided in subsection (2) of this section; and

(b) An expression of an intention by a person or group of persons to inflict something harmful in the way of destructive burning or explosion.

(2) However, a threat of fire does not include an alarm triggered for the purpose of maintenance testing.

(3) A threat or actual alarm shall be reported immediately to the State Fire Marshal and the local fire department.

Section 7. [8:] Annual Report. [(1)] The annual report filed by an institution as set forth in KRS 164.9485 shall include:

(1) A heading that shall consist of: [2000-Ky. Acts ch. 190, p. 478, sec. 4 shall be titled "The Michael Minger Act Report for (DATE)"]:

(2) The heading for the annual report shall include:]

(a) The name of the institution;

(b) The title of the report which shall be:

1. "The (DATE) Michael Minger Act Report".

2. The date shall be the calendar year in which the report is submitted.

(c) The next line of the heading shall be:

1. "Activity Reported for Calendar Year (DATE)".

2. The date reported shall be the calendar year in which the crime was reported.

(2) The first section of the report [1. The title of the report as set forth in subsection (1) of this section; and

2. The calendar year for the report following the word for:

(3) The body of the report shall include these sections organized as set forth in this subsection:

(a) Section 1 shall be titled "Section 1: Campus Security Authority" and shall include:

(a) [1:] A list of all personnel that meet the definition of Section 1(4) of this administrative regulation;

(b) [2:] A description of the extent and nature of the enforcement authority of campus security authority personnel; and

(c) [3:] The working relationship of campus security authority personnel with state and local police agencies.

(3) The second section of the report [(b) Section 2] shall be titled "Section 2: Description of Information Programs" and shall include[:

1:] a description of programs that inform students and employees about:

(a) [a:] Campus safety and security;

(b) [b:] How to report crimes; and

(c) [c:] How to prevent crimes.

(4) The third section of the report [(c) Section 3] shall be titled "Section 3: Campus Crime Statistics [for (DATE)]" and shall include the following tables:

(a) Table 1 shall report crime statistics for the reporting period as follows:

[1. The calendar year of the report after the word for; and

2. The tables as follow:]

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Table 1
(INSTITUTION NAME)
The (DATE)¹ Michael Minger Act Report
Crimes Reported in Calendar Year (DATE)²

| Crime Category ³ | On Campus | | Off Campus | |
|-----------------------------|---|---|---|-------------------------------------|
| | Total Campus Property Crimes ⁴ | Residential Facility Crimes ⁵ (subset of Campus) | Recognized/owned/leased/controlled Property Crimes ⁶ | Public Property Crimes ⁷ |
| Arson | | | | |
| Assault | | | | |
| Burglary | | | | |
| Criminal Damage | | | | |
| Hate Crime ⁸ | | | | |
| Bias - Race | | | | |
| Bias - Gender | | | | |
| Bias - Religion | | | | |
| Bias - Sexual Orientation | | | | |
| Bias - Ethnic | | | | |
| Bias - Disability | | | | |
| Manslaughter | | | | |
| Menacing | | | | |
| Motor Vehicle Theft | | | | |
| Murder | | | | |
| Reckless Homicide | | | | |
| Robbery | | | | |
| Sex Offenses - Forcible | | | | |
| Sex Offenses - Nonforcible | | | | |
| Stalking | | | | |
| Terroristic Threatening | | | | |
| Theft | | | | |
| Wanton Endangerment | | | | |
| Weapons Possession | | | | |
| Arrest Only | | | | |
| Drug-related Violations | | XXXXXXXX | | |
| Liquor-law Violations | | XXXXXXXX | | |
| Other Alcohol Violations | | XXXXXXXX | | |

Notes for Preceding Chart

¹The date is the calendar year in which the report was submitted.

²The date is the calendar year in which the crime was reported.

³Section 5 of this administrative regulation provides guidance in defining crimes committed.

⁴Assistance in defining campus property may be found in 34 CFR 668.46.

⁵Number of crimes that occurred in institution residence halls, student apartment housing, or Greek-sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals.

⁶Noncampus property is any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area and assistance in defining noncampus property may be found in 34 CFR 668.46.

⁷Assistance in defining public property may be found in 34 CFR 668.46.

⁸Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by KRS 164.948(3), or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice.

(b) Table 2 shall report criminal attempt statistics for the reporting period as follows:

Table 2
(INSTITUTION NAME)
The (DATE)¹ Michael Minger Act Report
Criminal Attempts Reported in Calendar Year (DATE)²

| Crime Category ³ | On Campus | | Off Campus | |
|-----------------------------|---|---|---|---------------------------------------|
| | Total Campus Property Attempts ⁴ | Residential Facility Attempts ⁵ (subset of Campus) | Recognized/owned/leased/controlled Property Attempts ⁶ | Public Property Attempts ⁷ |
| Arson | | | | |
| Assault | | | | |
| Burglary | | | | |
| Criminal Damage | | | | |
| Hate Crime ⁸ | | | | |
| Bias - Race | | | | |
| Bias - Gender | | | | |
| Bias - Religion | | | | |
| Bias - Sexual Orientation | | | | |
| Bias - Ethnic | | | | |
| Bias - Disability | | | | |
| Manslaughter | | | | |
| Menacing | | | | |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | | | | |
|----------------------------|--|--|--|--|
| Motor Vehicle Theft | | | | |
| Murder | | | | |
| Reckless Homicide | | | | |
| Robbery | | | | |
| Sex Offenses - Forcible | | | | |
| Sex Offenses - Nonforcible | | | | |
| Stalking | | | | |
| Terroristic Threatening | | | | |
| Theft | | | | |
| Wanton Endangerment | | | | |
| Weapons Possession | | | | |

Notes for Preceding Chart

¹The date is the calendar year in which the report was submitted.

²The date is the calendar year in which the attempt was reported.

³Section 5 of this administrative regulation provides guidance in defining crimes attempted.

⁴Assistance in defining campus property may be found in 34 CFR § 668.46.

⁵Number of criminal attempts that occurred in institution residence halls, student apartment housing, or Greek-sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals.

⁶Noncampus property is any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area and assistance in defining noncampus property may be found in 34 CFR § 668.46.

⁷Assistance in defining public property may be found in 34 CFR § 668.46.

⁸Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by KRS 164.948(3), or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice.

(b) Table 3 shall provide incident report statistics for the reporting period as follows:

Table 3
(INSTITUTION NAME)
The (DATE)¹ Michael Minger Act Report
Incidents Reported by Nonlaw Enforcement Officials in Calendar Year (DATE)²

| Crime Category ³ | On Campus | | Off Campus | |
|-----------------------------|--|--|--|--|
| | Total Campus Property Incidents ⁴ | Residential Facility Incidents ⁵ (subset of Campus) | Recognized/owned/leased/controlled Property Incidents ⁶ | Public Property Incidents ⁷ |
| Arson | | | | |
| Assault | | | | |
| Burglary | | | | |
| Criminal Damage | | | | |
| Hate Crime ⁸ | | | | |
| Bias - Race | | | | |
| Bias - Gender | | | | |
| Bias - Religion | | | | |
| Bias - Sexual Orientation | | | | |
| Bias - Ethnic | | | | |
| Bias - Disability | | | | |
| Manslaughter | | | | |
| Menacing | | | | |
| Motor Vehicle Theft | | | | |
| Murder | | | | |
| Reckless Homicide | | | | |
| Robbery | | | | |
| Sex Offenses - Forcible | | | | |
| Sex Offenses - Nonforcible | | | | |
| Stalking | | | | |
| Terroristic Threatening | | | | |
| Theft | | | | |
| Wanton Endangerment | | | | |
| Weapons Possession | | | | |
| Arrest Only | | | | |
| Drug-related Violations | | XXXXXXXX | | |
| Liquor-law Violations | | XXXXXXXX | | |
| Other Alcohol Violations | | XXXXXXXX | | |

Notes for Preceding Chart

¹The date is the calendar year in which the report was submitted.

²The date is the calendar year in which the incident was reported.

³Section 5 of this administrative regulation provides guidance in defining crimes committed.

⁴Assistance in defining campus property may be found in 34 CFR § 668.46.

⁵Number of incidences that occurred in institution residence halls, student apartment housing, or Greek sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals.

⁶Noncampus property is any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area and assistance in defining noncampus property may be found in 34 CFR § 668.46.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

⁷ Assistance in defining public property may be found in 34 CFR § 668.46.

⁸ Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by KRS 164.948(3), or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice.

Section 8. Enforcement. (1) KRS 164.993 provides criminal penalties for a violation of KRS 164.9481 and 164.9483.

(2) A person who has reason to believe that any person has violated KRS 164.9483 may register a complaint with the State Fire Marshal's Office, or a person who has reason to believe that

any person has violated KRS 164.9481 or 164.9483 may register a complaint with the county attorney in the county where the institution is located.

[(INSTITUTION NAME)]

Federal Campus Security and Campus Crime Statistics Disclosure (Clery) Act & Michael Minger Act

| Crime Category (1) | Campus Property (2) | Criminal Attempt (3) | Campus Residential Facility (4) | Noncampus Property (5) | Public Property (6) |
|----------------------------|------------------------|-------------------------|---------------------------------|---------------------------|------------------------|
| Arson | | | | | |
| Assault | | | | | |
| Burglary | | | | | |
| Criminal Damage | | | | | |
| Hate Crime (7) | | | | | |
| Bias - Race | | | | | |
| Bias - Gender | | | | | |
| Bias - Religion | | | | | |
| Bias - Sexual Orientation | | | | | |
| Bias - Ethnic | | | | | |
| Bias - Disability | | | | | |
| Manslaughter | | | | | |
| Menacing | | | | | |
| Motor Vehicle Theft | | | | | |
| Murder | | | | | |
| Reckless Homicide | | | | | |
| Robbery | | | | | |
| Sex Offenses - Forcible | | | | | |
| Sex Offenses - Nonforcible | | | | | |
| Stalking | | | | | |
| Terroristic Threatening | | | | | |
| Theft | | | | | |
| Wanton Endangerment | | | | | |
| Weapons Possession | | | | | |

Notes for Preceding Chart

1. These are the crime categories as required by the federal and state statute. Those crime categories listed in bold print are specific to the Minger Act while both statutes require all others.

2. On-campus property includes all property owned by the institution and any reports taken by institution law enforcement officers on adjacent streets.

3. Any attempt to commit the crimes listed in column one.

4. Number of crimes that occurred in institution residence halls, student apartment housing, or Greek sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals.

5. Noncampus property. These are any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area.

6. Public property within the same reasonably contiguous geographic area of the institution (sidewalk, street, other thoroughfare or parking facility) and adjacent to a facility owned or controlled by the institution. These crime statistics are those reported to/by the (INSERT LOCAL LAW ENFORCEMENT AUTHORITY HERE), the law enforcement agency with primary jurisdiction of that area.

7. Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by the statute, or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice.

Selected Referral and Arrest Statistics

| Crime Category | (Year of Report) |
|-------------------|------------------|
| Alcohol Related | |
| Drug Related | |
| Weapon Possession | |

Reported Crimes - Prior Reporting Periods

| Crime Category | (Third prior year) | (Second prior year) | (First prior year) |
|-----------------|--------------------|---------------------|--------------------|
| Arson | | | |
| Assault | | | |
| Burglary | | | |
| Criminal Damage | | | |
| Hate Crime (7) | | | |
| Bias - Race | | | |
| Bias - Gender | | | |
| Bias - Religion | | | |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | | | |
|----------------------------|--|--|--|
| Bias – Sexual Orientation | | | |
| Bias – Ethnic | | | |
| Bias – Disability | | | |
| Manslaughter | | | |
| Menacing | | | |
| Motor Vehicle Theft | | | |
| Murder | | | |
| Reckless Homicide | | | |
| Robbery | | | |
| Sex Offenses – Forcible | | | |
| Sex Offenses – Nonforcible | | | |
| Stalking | | | |
| Terroristic Threatening | | | |
| Theft | | | |
| Wanton Endangerment | | | |
| Weapons Possession | | | |

Selected Referral and Arrest Statistics – Prior Reporting Periods

| Crime Category | (Third prior year) | (Second prior year) | (First prior year) |
|-------------------|--------------------|---------------------|--------------------|
| Alcohol Related | | | |
| Drug Related | | | |
| Weapon Possession | | | |

Crimes Reported by Nonlaw Enforcement Officials With No Police Investigation

| Crime Category | (Year of Report) |
|----------------------------|------------------|
| Alcohol Violations | |
| Arson | |
| Assault | |
| Burglary | |
| Griminal Attempt | |
| Griminal Damage | |
| Drug Violations | |
| Hate Crime (7) | |
| Bias – Race | |
| Bias – Gender | |
| Bias – Religion | |
| Bias – Sexual Orientation | |
| Bias – Ethnic | |
| Bias – Disability | |
| Manslaughter | |
| Menacing | |
| Motor Vehicle Theft | |
| Murder | |
| Reckless Homicide | |
| Robbery | |
| Sex Offenses – Forcible | |
| Sex Offenses – Nonforcible | |
| Stalking | |
| Terroristic Threatening | |
| Theft | |
| Wanton Endangerment | |
| Weapons Possession | |

These crime statistics are provided in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998 and the Michael Minger Act of 2000. If you have any questions, contact (insert contact information), at (insert contact phone number):

{4} The calendar year for the annual report shall be the calendar year previous to the year in which the report is filed.}

GORDON K. DAVIES, President
APPROVED BY AGENCY: December 1, 2000
FILED WITH LRC: December 1, 2000 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dennis L. Taulbee, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides a framework for institutional reporting of campus crime statistics. The administrative regulation also provides instructions for maintenance of a daily log and for reporting fires and threats of fire to the

State Fire Marshal.

(b) The necessity of this administrative regulation: This administrative regulation is required by the Michael Minger Act, 2000 Ky. Acts Ch. 190, p. 478.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation follows the authorizing statute closely.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The authorizing statute requires the Council on Postsecondary Education to develop formats and guidelines to assist institutions in reporting and to ensure comparability in reporting. The annual report tables provide clear direction to institutions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The principal organizations affected by this administrative regulation are the private, independent postsecondary education institutions licensed by the Council on Postsecondary Education who have special reporting responsibilities under the Michael Minger Act. Students and employees of those institutions as well as prospective students and employees will have accurate and complete information available to them through the state-mandated reporting system. The State Fire Marshal is assured of a complete and timely reporting of fires and threats of fire that might affect the health and safety of students. Parents of students are affected in that they will have timely information that will enable them to make informed choices about institutions. The general public also is protected by a comprehensive reporting system.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There is a cost associated with reporting of crime statistics and the maintenance of a daily log. All institutions have absorbed the additional cost.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The private, independent institutions did not provide a cost estimate for implementation of the Act.

(b) On a continuing basis: No cost information is available.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Institutional funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Institutions have not indicated an intention to raise fees in order to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly established. Private institutions control the assessment of tuition and fees. None have expressed an intention to raise fees.

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

COUNCIL ON POSTSECONDARY EDUCATION (Amended After Hearing)

13 KAR 2:100. Campus security.

RELATES TO: KRS 164.945 to 164.947, 227.200, 227.230

STATUTORY AUTHORITY: KRS 164.020(28), 164.948 to 164.9489, 164.993 [2000-Ky. Acts ch. 190, p. 478]

NECESSITY, FUNCTION, AND CONFORMITY: The Michael Minger Act[~~], 2000-Ky. Acts ch. 190, p. 478;~~] requires public postsecondary education institutions and those private postsecondary education institutions licensed by the Council on Postsecondary Education to report campus crimes to employees, [the] students and the public and to report annually to the Council on Postsecondary Education. The council has responsibility for developing formats for reporting crime statistics and for ensuring that annual reports are received from the institutions. The State Fire Marshal is granted access to the property of an institution that is covered by this act for ~~[the purpose of]~~ inspection, investigation, or any other action necessary to prevent fire loss or to determine the origin of any fire. This administrative regulation addresses the responsibilities of public postsecondary education institutions.

Section 1. Definitions. (1) "Annual report" means the report submitted by an institution to the council that satisfies the requirements of KRS 164.9485 [2000-Ky. Acts ch. 190, p. 478, sec. 5].

(2) "Campus" is defined in KRS 164.948(1) [2000-Ky. Acts ch. 190, p. 478, sec. 1].

(3) "Campus crime log" means the daily log maintained by an institution and developed by the council consistent with the provisions of KRS 164.9481(1) [2000-Ky. Acts ch. 190, p. 478, sec. 2].

(4) "Campus security authority" is defined in KRS 164.948(2) [2000-Ky. Acts ch. 190, p. 478, sec. 5].

(5) "Clery Act" means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Acts, 20 USC 1092(f) and as implemented in 34 CFR 668.46.

(6) "Council" means the Council on Postsecondary Education as established by KRS 164.011.

(7) [(6)] "Crime" is defined in KRS 164.948(3) [2000-Ky. Acts ch. 190, p. 478, sec. 1(3)].

(8) "State [(7)] Fire Marshal" means the officer [State Fire Marshal-as] described in KRS Chapter 227.

(9) [(8)] "Institution" means a public postsecondary education institution as defined in KRS 164.948(4) [2000-Ky. Acts ch. 190, p. 478, sec. 1(4)].

Section 2. Property Included Under the Term Campus. (1) An institution shall, consistent with the provisions of KRS 164.948(1) [2000-Ky. Acts ch. 190, p. 478, sec. 1(1)], establish a list of all property:

- (a) Owned; or
- (b) Managed or controlled [;-or
- (c) Controlled] by an institution.

(2) In establishing the list of property required in subsection (1) of this section, an institution shall use 34 CFR 668.46.

(3) [(a)] All property on the list shall be classified by one (1) of the categories listed in subsection (1) of this section:

(b)] The list shall be updated as necessary but not less than annually.

(4) [(3)] Property controlled by an institution as set forth in KRS 164.948(1) [2000-Ky. Acts ch. 190, p. 478, sec. 1(1)] includes real property owned by groups that are[:

- (a)] officially recognized by an institution[;-and
- (b)] For which the institution exercises some administrative control].

(5) [(4)] The list described in this section shall be available to the Council on Postsecondary Education if requested.

Section 3. Campus Crime Log. (1) An institution shall maintain a campus crime log as required by KRS 164.9481(1).

(2) Information contained in the campus crime log shall include all data elements required by KRS 164.9481(1).

(3) [Release of Information to the Public. (1) In satisfying the provisions of 2000-Ky. Acts ch. 190, p. 478, sec. 2(1)(b)1,] An institution shall develop and maintain a written policy that [is]:

(a) Ensures crime log information is available to the public as soon as possible, but no later than the time frame specified in KRS 164.9481(1)(b); and

(b) Is subject to the limitations established in KRS 164.9481(1) [2000-Ky. Acts ch. 190, p. 478, sec. 2(1)(b)1; and

(b) Designed to ensure that information is available to the public as soon as possible.

(4) [(2)] The policy shall state that the institution shall not withhold information except as provided in KRS 164.9481(1) [set forth the conditions, subject to the limitations of subsection (1)(a) of this section, under which that institution may withhold information on an incident].

(5) [(3)](a) An institution may archive campus crime log entries [information] after sixty (60) days have elapsed from the date when an incident was reported.

(b) An institution that elects to archive campus crime log entries [information] as described in paragraph (a) of this subsection shall [have two (2) business days to] respond to information requests for material that has been archived within two (2) business days.

Section 4. Special Reports. An institution shall report, in writing, to

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

the council on how it shall comply with the provisions of KRS 164.9481(2) [2000 Ky. Acts ch. 190, p. 478, sec. 2(2)].

Section 5. [Campus Crime Log. (1) An institution shall maintain a campus crime log as required by 2000 Ky. Acts ch. 190, p. 478, sec. 2:

(2) Information contained in the campus crime log shall include all data elements contained in 2000 Ky. Acts ch. 190, p. 478, sec. 2(1):

Section 6.] Crime. The meaning of a crime listed in KRS 164.948(3) [2000 Ky. Acts ch. 190, p. 478, sec. 1(3)] shall be consistent, to the extent possible, with the definitions and standards established in the Uniform Crime Reporting System of the federal government, and with the Kentucky Revised Statutes, where appropriate. [as set forth in the Kentucky Revised Statutes, and, to the extent possible, shall be consistent with the Uniform Crime Reporting System of the federal government:]

Section 6. [7:] State Fire Marshal and Threat of Fire. (1) A threat of fire includes:

(a) All fire alarms except as provided in subsection (2) of this section; and

(b) An expression of an intention by a person or group of persons to inflict something harmful in the way of destructive burning or explosion.

(2) However, a threat of fire does not include an alarm triggered for the purpose of maintenance testing.

(3) A threat or actual alarm shall be reported immediately to the State Fire Marshal and the local fire department.

Section 7. [8:] Annual Report. [(1)] The annual report filed by an institution as set forth in KRS 164.9485 shall include:

(1) A heading that shall consist of: [2000 Ky. Acts ch. 190, p. 478, sec. 4 shall be titled the Michael Minger Act Report for (DATE):

(2) The heading for the annual report shall include:]

(a) The name of the institution;

(b) The title of the report which shall be:

1. "The (DATE) Michael Minger Act Report".

2. The date shall be the calendar year in which the report is submitted.

(c) The next line of the heading shall be:

1. "Activity Reported for Calendar Year (DATE)".

2. The date reported shall be the calendar year in which the crime was reported.

(2) The first section of the report [1. The title of the report as set forth in subsection (1) of this section; and

2. The calendar year for the report following the word for.

(3) The body of the report shall include these sections organized as set forth in this subsection:

(a) Section 1 shall be titled "Section 1: Campus Security Authority" and shall include:

(a) [1:] A list of all personnel that meet the definition of Section 1(4) of this administrative regulation;

(b) [2:] A description of the extent and nature of the enforcement authority of campus security authority personnel; and

(c) [3:] The working relationship of campus security authority personnel with state and local police agencies.

(3) The second section of the report [(b) Section 2] shall be titled "Section 2: Description of Information Programs" and shall include:

1.] a description of programs that inform students and employees about:

(a) [a:] Campus safety and security;

(b) [b:] How to report crimes; and

(c) [c:] How to prevent crimes.

(4) The third section of the report [(c) Section 3] shall be titled "Section 3: Campus Crime Statistics [for (DATE)]" and shall include the following tables:

(a) Table 1 shall report crime statistics for the reporting period as follows:

[1. The calendar year of the report after the word for; and

2. The tables as follow:]

Table 1
(INSTITUTION NAME)
The (DATE)¹ Michael Minger Act Report
Crimes Reported in Calendar Year (DATE)²

| Crime Category ³ | On Campus | | Off Campus | |
|-----------------------------|---|---|---|-------------------------------------|
| | Total Campus Property Crimes ⁴ | Residential Facility Crimes ⁵ (subset of Campus) | Recognized/owned/leased/controlled Property Crimes ⁶ | Public Property Crimes ⁷ |
| Arson | | | | |
| Assault | | | | |
| Burglary | | | | |
| Criminal Damage | | | | |
| Hate Crime ⁸ | | | | |
| Bias - Race | | | | |
| Bias - Gender | | | | |
| Bias - Religion | | | | |
| Bias - Sexual Orientation | | | | |
| Bias - Ethnic | | | | |
| Bias - Disability | | | | |
| Manslaughter | | | | |
| Menacing | | | | |
| Motor Vehicle Theft | | | | |
| Murder | | | | |
| Reckless Homicide | | | | |
| Robbery | | | | |
| Sex Offenses - Forcible | | | | |
| Sex Offenses - Nonforcible | | | | |
| Stalking | | | | |
| Terroristic Threatening | | | | |
| Theft | | | | |
| Wanton Endangerment | | | | |
| Weapons Possession | | | | |
| Arrest Only | | | | |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | | | |
|--------------------------|---------|--|--|
| Drug-related Violations | XXXXXXX | | |
| Liquor-law Violations | XXXXXXX | | |
| Other Alcohol Violations | XXXXXXX | | |

Notes for Preceding Chart

¹The date is the calendar year in which the report was submitted.

²The date is the calendar year in which the crime was reported.

³Section 5 of this administrative regulation provides guidance in defining crimes committed.

⁴Assistance in defining campus property may be found in 34 CFR 668.46.

⁵Number of crimes that occurred in institution residence halls, student apartment housing, or Greek-sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals.

⁶Noncampus property is any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area and assistance in defining noncampus property may be found in 34 CFR 668.46.

⁷Assistance in defining public property may be found in 34 CFR 668.46.

⁸Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by KRS 164.948(3), or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice.

(b) Table 2 shall report criminal attempt statistics for the reporting period as follows:

Table 2
(INSTITUTION NAME)
The (DATE)¹ Michael Minger Act Report
Criminal Attempts Reported in Calendar Year (DATE)²

| Crime Category ³ | On Campus | | Off Campus | |
|-----------------------------|---|---|---|---------------------------------------|
| | Total Campus Property Attempts ⁴ | Residential Facility Attempts ⁵ (subset of Campus) | Recognized/owned/leased/controlled Property Attempts ⁶ | Public Property Attempts ⁷ |
| Arson | | | | |
| Assault | | | | |
| Burglary | | | | |
| Criminal Damage | | | | |
| Hate Crime ⁸ | | | | |
| Bias - Race | | | | |
| Bias - Gender | | | | |
| Bias - Religion | | | | |
| Bias - Sexual Orientation | | | | |
| Bias - Ethnic | | | | |
| Bias - Disability | | | | |
| Manslaughter | | | | |
| Menacing | | | | |
| Motor Vehicle Theft | | | | |
| Murder | | | | |
| Reckless Homicide | | | | |
| Robbery | | | | |
| Sex Offenses - Forcible | | | | |
| Sex Offenses - Nonforcible | | | | |
| Stalking | | | | |
| Terroristic Threatening | | | | |
| Theft | | | | |
| Wanton Endangerment | | | | |
| Weapons Possession | | | | |

Notes for Preceding Chart

¹The date is the calendar year in which the report was submitted.

²The date is the calendar year in which the attempt was reported.

³Section 5 of this administrative regulation provides guidance in defining crimes attempted.

⁴Assistance in defining campus property may be found in 34 CFR 668.46.

⁵Number of criminal attempts that occurred in institution residence halls, student apartment housing, or Greek-sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals.

⁶Noncampus property is any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area and assistance in defining noncampus property may be found in 34 CFR 668.46.

⁷Assistance in defining public property may be found in 34 CFR 668.46.

⁸Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by KRS 164.948(3), or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice.

(b) Table 3 shall provide incident report statistics for the reporting period as follows:

Table 3
(INSTITUTION NAME)
The (DATE)¹ Michael Minger Act Report
Incidents Reported by Nonlaw Enforcement Officials in Calendar Year (DATE)²

| Crime Category ³ | On Campus | | Off Campus | |
|-----------------------------|--|--|--|--|
| | Total Campus Property Incidents ⁴ | Residential Facility Incidents ⁵ (subset of Campus) | Recognized/owned/leased/controlled Property Incidents ⁶ | Public Property Incidents ⁷ |
| Arson | | | | |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | | | | |
|----------------------------|--|----------|--|--|
| Assault | | | | |
| Burglary | | | | |
| Criminal Damage | | | | |
| Hate Crime ⁸ | | | | |
| Bias - Race | | | | |
| Bias - Gender | | | | |
| Bias - Religion | | | | |
| Bias - Sexual Orientation | | | | |
| Bias - Ethnic | | | | |
| Bias - Disability | | | | |
| Manslaughter | | | | |
| Menacing | | | | |
| Motor Vehicle Theft | | | | |
| Murder | | | | |
| Reckless Homicide | | | | |
| Robbery | | | | |
| Sex Offenses - Forcible | | | | |
| Sex Offenses - Nonforcible | | | | |
| Stalking | | | | |
| Terroristic Threatening | | | | |
| Theft | | | | |
| Wanton Endangerment | | | | |
| Weapons Possession | | | | |
| | | | | |
| Arrest Only | | | | |
| Drug-related Violations | | XXXXXXXX | | |
| Liquor-law Violations | | XXXXXXXX | | |
| Other Alcohol Violations | | XXXXXXXX | | |

Notes for Preceding Chart

¹The date is the calendar year in which the report was submitted.

²The date is the calendar year in which the incident was reported.

³Section 5 of this administrative regulation provides guidance in defining crimes committed.

⁴Assistance in defining campus property may be found in 34 CFR 668.46.

⁵Number of incidences that occurred in institution residence halls, student apartment housing, or Greek-sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals.

⁶Noncampus property is any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area and assistance in defining noncampus property may be found in 34 CFR 668.46.

⁷Assistance in defining public property may be found in 34 CFR 668.46.

⁸Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by KRS 164.948(3), or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice.

Section 8. Enforcement. (1) KRS 164.993 provides criminal penalties for a violation of KRS 164.9481 and 164.9483.

(2) A person who has reason to believe that any person has violated KRS 164.9483 may register or complaint with the State Fire Marshal's Office, or a person who has reason to believe that

any person has violated KRS 164.9481 or 164.9483 may register a complaint with the county attorney in the county where the institution is located.

[(INSTITUTION-NAME)]

Federal Campus Security and Campus Crime Statistics Disclosure (Clery) Act & Michael-Minger Act

| Crime Category (1) | Campus Property (2) | Criminal Attempt (3) | Campus Residential Facility (4) | Noncampus Property (5) | Public Property (6) |
|---------------------------|------------------------|-------------------------|---------------------------------|---------------------------|------------------------|
| Arson | | | | | |
| Assault | | | | | |
| Burglary | | | | | |
| Criminal Damage | | | | | |
| Hate Crime (7) | | | | | |
| Bias - Race | | | | | |
| Bias - Gender | | | | | |
| Bias - Religion | | | | | |
| Bias - Sexual Orientation | | | | | |
| Bias - Ethnic | | | | | |
| Bias - Disability | | | | | |
| Manslaughter | | | | | |
| Menacing | | | | | |
| Motor Vehicle Theft | | | | | |
| Murder | | | | | |
| Reckless Homicide | | | | | |
| Robbery | | | | | |
| Sex Offenses - Forcible | | | | | |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | | | | | |
|----------------------------|--|--|--|--|--|
| Sex Offenses - Nonforcible | | | | | |
| Stalking | | | | | |
| Terroristic Threatening | | | | | |
| Theft | | | | | |
| Wanton Endangerment | | | | | |
| Weapons Possession | | | | | |

Notes for Preceding Chart

1. These are the crime categories as required by the federal and state statute. Those crime categories listed in bold print are specific to the Minger Act while both statutes require all others:

2. On-campus property includes all property owned by the institution and any reports taken by institution law enforcement officers on adjacent streets:

3. Any attempt to commit the crimes listed in column one:

4. Number of crimes that occurred in institution residence halls, student apartment housing, or Greek-sponsored housing facilities, if appropriate. These numbers are included in the on-campus property totals:

5. Noncampus property. These are any of the officially recognized/owned/leased/controlled institution properties that are located off the main campus area:

6. Public property within the same reasonably contiguous geographic area of the institution (sidewalk, street, other thoroughfare or parking facility) and adjacent to a facility owned or controlled by the institution. These crime statistics are those reported to/by the (INSERT LOCAL LAW ENFORCEMENT AUTHORITY HERE), the law enforcement agency with primary jurisdiction of that area:

7. Hate crimes - These are crimes that fall into one (1) of the reportable categories as required by the statute, or other crimes in which the victim was intentionally selected because of an actual or perceived prejudice:

Selected Referral and Arrest Statistics

| Crime Category | (Year of Report) |
|-------------------|------------------|
| Alcohol Related | |
| Drug Related | |
| Weapon Possession | |

Reported Crimes - Prior Reporting Periods

| Crime Category | (Third prior year) | (Second prior year) | (First prior year) |
|----------------------------|--------------------|---------------------|--------------------|
| Arson | | | |
| Assault | | | |
| Burglary | | | |
| Criminal Damage | | | |
| Hate Crime (7) | | | |
| Bias - Race | | | |
| Bias - Gender | | | |
| Bias - Religion | | | |
| Bias - Sexual Orientation | | | |
| Bias - Ethnic | | | |
| Bias - Disability | | | |
| Manslaughter | | | |
| Menacing | | | |
| Motor Vehicle Theft | | | |
| Murder | | | |
| Reckless Homicide | | | |
| Robbery | | | |
| Sex Offenses - Forcible | | | |
| Sex Offenses - Nonforcible | | | |
| Stalking | | | |
| Terroristic Threatening | | | |
| Theft | | | |
| Wanton Endangerment | | | |
| Weapons Possession | | | |

Selected Referral and Arrest Statistics - Prior Reporting Periods

| Crime Category | (Third prior year) | (Second prior year) | (First prior year) |
|-------------------|--------------------|---------------------|--------------------|
| Alcohol Related | | | |
| Drug Related | | | |
| Weapon Possession | | | |

Crimes Reported by Nonlaw Enforcement Officials With No Police Investigation

| Crime Category | (Year of Report) |
|--------------------|------------------|
| Alcohol Violations | |
| Arson | |
| Assault | |
| Burglary | |
| Criminal Attempt | |
| Criminal Damage | |
| Drug Violations | |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

| | |
|----------------------------|--|
| Hate Crime (7) | |
| Bias – Race | |
| Bias – Gender | |
| Bias – Religion | |
| Bias – Sexual Orientation | |
| Bias – Ethnic | |
| Bias – Disability | |
| Manslaughter | |
| Menacing | |
| Motor Vehicle Theft | |
| Murder | |
| Reckless Homicide | |
| Robbery | |
| Sex Offenses – Forcible | |
| Sex Offenses – Nonforcible | |
| Stalking | |
| Terroristic Threatening | |
| Theft | |
| Wanton Endangerment | |
| Weapons Possession | |

These crime statistics are provided in compliance with the Jeanne Glery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998 and the Michael Minger Act of 2000. If you have any questions, contact (insert contact information), at (insert contact phone number).

(4) The calendar year for the annual report shall be the calendar year previous to the year in which the report is filed.]

GORDON K. DAVIES, President

APPROVED BY AGENCY: December 1, 2000

FILED WITH LRC: December 1, 2000 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dennis L. Taulbee, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides a framework for institutional reporting of campus crime statistics. The administrative regulation also provides instructions for maintenance of a daily log and for reporting fires and threats of fire to the State Fire Marshal.

(b) The necessity of this administrative regulation: This administrative regulation is required by the Michael Minger Act, 2000 Ky. Acts ch. 190, p. 478.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation follows the authorizing statute closely.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The authorizing statute requires the Council on Postsecondary Education to develop formats and guidelines to assist institutions in reporting and to ensure comparability in reporting. The annual report tables provide clear direction to institutions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The principal organizations affected by this administrative regulation are the public postsecondary education institutions who have special reporting responsibilities under the Michael Minger Act. Students and employees of those institutions as well as prospective students and employees will have accurate and complete information available to them through the state-mandated reporting system. The State Fire Marshal is assured of a complete and timely reporting of fires and threats of fire that might affect the health and safety of stu-

dents. Parents of students are affected in that they will have timely information that will enable them to make informed choices about institutions. The general public also is protected by a comprehensive reporting system.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There is a cost associated with reporting of crime statistics and the maintenance of a daily log. All institutions have absorbed the additional cost.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

Initially: The private, independent institutions did not provide a cost estimate for implementation of the Act.

(b) On a continuing basis: No cost information is available.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Institutional funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Institutions have not indicated an intention to raise fees in order to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly established. Private institutions control the assessment of tuition and fees. None have expressed an intention to raise fees.

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank

Environmental Assurance Fund

(Amended After Hearing)

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-100, 224.60-105(1), (2), (4), 224.60-110, 224.60-115, 224.60-120(5), 224.60-130(2), (4), 224.60-135, 224.60-140(2), (3), (5)-(15), (17), (18), (19), 224.60-142, 224.60-155, 224.99-010(4), (9), 224.99-020, 224.99-030, 40 CFR Parts 280, 281, 42 USC 6991a-e, g

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(a) through (e) require the fund to establish the procedures to administer the fund. This administrative regulation establishes the procedures for an eligible petroleum storage tank owner or operator to make a claim to the office for reimbursement or payment of the cost of corrective action.

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

(2) Application shall be made on the Application for Assistance Form. The eligible owner or operator shall demonstrate:

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

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. If the performance of corrective action is not necessary for closure, the facility shall not be eligible for reimbursement of corrective action [actions] costs from the fund.

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

1. Approve the Application for Assistance;
2. Establish the amount to be obligated; and
3. Determine the appropriate account.

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

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

(4)(a) The office shall amend an approved Application for Assistance to provide an additional obligation of funds to guarantee payment of the cost of corrective action, if the office determines the action is necessary to guarantee payment of eligible costs [cost] and to comply with 401 KAR Chapter 42, and if the applicant:

1. Submits a written request and supporting documents explaining the need for additional corrective action, and setting forth the following unit costs, in compliance with 415 KAR 1:110, for:

- a. Personnel;
- b. Sampling and laboratory testing;
- c. Excavation;
- d. Haulage;
- e. Treatment or disposal of contaminated soil or water; and
- f. Other expenses necessary to comply with 401 KAR Chapter 42;

and

2. Provides, within thirty (30) days of a request received by certified mail, additional information or documentation requested by the office, unless both parties agree in writing, within the thirty (30) day period, to an extension of time.

(b) The office shall deny the request [claim] for an additional obligation if the applicant fails to provide the requested information.

(c) Payment shall not exceed the amount obligated, in writing, by the office.

~~[(d) Payment shall not be made for the cost of additional corrective action incurred prior to approval.]~~

(5) Payment under the terms of the approved Application for Assistance shall be made when the eligible applicant submits a claim form, and a certification that the cost was reasonable and necessary to comply with 401 KAR Chapter 42. The requirement for the use of a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114.

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

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the fund shall submit a claim for reimbursement or payment from the office for the costs of corrective action on the Claim Request Form, the Soil Disposal/Treatment Claim Form, or the Capital Equipment Claim Form [and Listing of Invoices form]. The claim shall contain:

(a) The Invoice Listing Form and original invoices for costs for

which payment is sought;

~~(b) [A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;~~

~~(c) [e)] Documentation that the release has been reported to the cabinet; and~~

~~(c) [(d)] Laboratory analysis substantiating the necessity of:~~

1. The corrective action, except for initial abatement and free product recovery as required by 401 KAR 42:060; and

2. Off-site disposal of contaminated soil; and

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the applicant fails to correct the deficiency or to supply the additional information required by the office staff, that portion of the claim shall be denied.

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

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

(8) An owner or operator of a facility with an approved Application for Assistance shall submit to the office, a copy of [all] reports required by administrative regulation or requested, in writing, by the cabinet, detailing the status of remedial action at the facility, including:

(a) Site check reports;

(b) [;] Site investigation reports;

(c) [;] Corrective action plans;

(d) [;] Quarterly monitoring reports;

(e) [;] Closure assessment reports;

(f) [;] Site classification documents; and

(g) Any other reports to, or correspondence with, the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

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

Section 3. Contracts. (1) An owner or operator contracting for the performance of corrective action, including ~~[permanent closure, change-in-service,]~~ release investigation, site check, or site investigation, shall obtain a contract from a certified contractor or contracting company to be eligible for reimbursement or payment from the fund. The contract shall:

(a) Be obtained prior to commencing the activity, except emergency response measures as directed by the cabinet; and
(b) Set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including the cost of:

1. Personnel;
2. Sampling;
3. Excavation;
4. Treatment ~~or [of]~~ disposal of contamination; and
5. Other expenses necessary to comply with 401 KAR Chapter 42.

(2) A copy of the contract shall be submitted with an Application for Assistance. If a contract is changed or revised, a copy of that contract shall be submitted to the office.

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

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

(a) For a corporation, by:

1. A principal executive officer of at least the level of vice-president;
2. The duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility; or

3. A person designated by the board of directors by means of a corporate resolution;

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

(c) For a municipality, state or federal agency, by:

1. A principal;
2. Executive officer; or
3. Ranking elected official.

(2) A claim form [Request] or Application for Assistance Form shall also be signed by:

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

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

(3) All signatories shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification, or I am the person certified under 415 KAR Chapter 1 and my (our) certification is in good standing.

(4) The owner or operator signing the certification shall submit documentary evidence to substantiate the legality of the authorized representative's power of agency.

Section 5. Criteria For Approval of a Claim. (1) A claim with an

approved Application for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account shall be reviewed in the time period specified at Section 2(5)(a) of this administrative regulation.

(2) The claim shall be reviewed to determine if:

(a) The corrective action complies with 401 KAR Chapter 42;

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

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

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

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

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

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

(3) A claim [reimbursement-request] shall identify the beginning and ending dates for the time interval submitted in the claim. Costs incurred during the specified interval shall be submitted with the claim, except the cost submitted for reimbursement under Section 2(2) or (3) of this administrative regulation.

(4) A claim [for-reimbursement] shall be submitted:

(a) On or before October 13, 2001 [Within two (2) years of the effective date of this administrative regulation]; or

(b) Within two (2) years after issuance of a "no further action" letter by the cabinet.

(5) A payment shall be subject to final recommendation by the executive director and approval by the secretary or the secretary's designee.

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

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

(c) A claim [request] for final payment, or for one (1) time payment in full, shall be accompanied by a closure letter issued by the cabinet.

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

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

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response

to a suspected release due to tank or delivery line failure if a release of motor fuel is detected or upon written direction of the cabinet;

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

(c) Preparation of corrective action plans;

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

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

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

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

(h) The cost of material purchased to perform the site check, site investigation or corrective action, including bailers, sample containers, and similar equipment;

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

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

(k) An attorney fee integral to the performance of off-site corrective action, such as preparation of an off-site access agreement;

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

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

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

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

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

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

(d) Loss of business, income or profits;

(e) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;

3. Consultation on office administrative regulations;

4. Preparation or submittal of office documentation; and

5. Other legal services determined by the office not to be integral to the performance of corrective action.

(f) Decreased property values for the facility;

(g) Facility improvements;

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

(i) An aesthetic improvement to the facility;

(j) Interest on an overdue account or loan;

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

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

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

(n) A cost associated with a release from an aboveground tank or aboveground piping;

(o) Contractor markup expense for a normally expected overhead item or in-stock material;

(p) Contractor markup expense for personnel cost;

(q) A laboratory "rush" fee, unless directed by the cabinet;

(r) A cost or cost recovery for governmental emergency services;

(s) Preparation and implementation of a corrective action plan, if a

written notice of closure is issued by the cabinet;

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

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

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

(w) Except as provided in 415 KAR 1:130, cost related to the removal, or actions incidental to the removal of a tank system, including a cost listed in 415 KAR 1:130(5);

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

(y) Other costs relating to compliance with a local program operating under KRS 224.60-105(4), to the extent that those costs are required to comply with corrective action standards more stringent than required by the cabinet; and

(z) Other service or cost determined by the office to be an unreasonable or unnecessary cost of corrective action.

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

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

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

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

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

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

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

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

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

(4)(a) An owner or operator shall:

1. Provide an office inspector full access to an area or well for the collection of samples;

2. Split samples obtained by the facility with the office, if the inspector requires splitting;

3. Resample an area or well for which the result of analytical testing obtained by the office differs significantly from the result obtained by the facility; and

4. Have the burden of proving the validity of his result, if a discrepancy remains after resampling.

(b) The office shall not reimburse the cost of resampling.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(c) Failure to allow sample collection, or to split samples, shall render the facility ineligible for fund participation.

Section 12. Preapproval for Capital Equipment Rental or Purchase. (1) An owner or operator who has been directed by the cabinet to initiate remedial action that requires the purchase of equipment costing in excess of \$1,000, shall obtain prior approval of the purchase by submitting a Capital Equipment Preapproval Purchase/ [or] Rental [Request] form.

(2) The office shall approve either the purchase or rental of remediation equipment and shall establish the amount to be reimbursed.

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

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

2. If the bids required by subparagraph 1 of this paragraph cannot be obtained, the owner shall provide written documentation of the manufacturers' or suppliers' decline to bid. At least two (2) letters of declination shall be provided for each bid not submitted;

3. A cost benefit analysis comparing purchase against rental of the equipment;

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

5. The cost of shipping, installation, training and start-up, stated separately from the cost of equipment.

(b)1. The purchase of new equipment shall be considered by the fund at 100 percent of the invoice price for the system with the least expensive life cycle cost.

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

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

4. The owner or operator shall be responsible for unscheduled maintenance costs covered by the new equipment warranty.

(c)1. An owner or operator who chooses to begin remediation prior to acceptance of the corrective action plan shall submit three (3) bids to the office prior to the purchase of the equipment.

2. The cost of the equipment shall not be reimbursable until the cabinet accepts the corrective action plan.

3. A bid shall remain on file at the office until the corrective action plan is accepted.

4. When the plan is accepted, the owner or operator may request reimbursement for the purchase by submission of a completed Capital Equipment Claim [Purchase or Rental] Form.

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

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

2. If the bids required by subparagraph 1 [subsection (1)] of this paragraph cannot be obtained, the owner shall provide written documentation of the manufacturer or supplier's decline to bid. At least two (2) letters of declination shall be provided for each bid not submitted;

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

4. A description of the equipment, including specifications necessary to compare the proposed equipment with a bid for new equipment;

5. The remaining economic life of the used equipment;

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

7. The cost of shipping, installation, training and start-up, stated separately from the cost of equipment.

(b) Reimbursement for the purchase of used or reconditioned equipment shall be the cost of purchase plus fifteen (15) percent markup less the anticipated salvage value, and shall be limited to:

1. For used equipment, sixty-five (65) percent of the cost of the

most economical new system bid submitted to the office; and

2. For reconditioned equipment, eighty (80) percent of the cost of the most economical new system bid submitted to the office.

(d) Reimbursement shall not be made for unscheduled maintenance or component replacement occurring during the greater of:

1. The period of limited warranty specified by the supplier or manufacturer; or

2. 180 days.

(5) An owner or operator may request rental of remediation equipment if the cost of rental does not exceed the cost of purchase.

(a) The fund shall:

1. Reimburse for actual active usage of rented remediation equipment; and

2. Not reimburse for idle equipment maintained at the facility for the convenience of the contractual parties.

(b) A request to rent equipment shall contain:

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

2. If the bids required by subparagraph 1 of this paragraph cannot be obtained, the owner shall provide written documentation of the manufacturer or supplier's decline to bid. At least two (2) letters of declination must be provided for each bid not submitted; and

3. The cost of shipping, installation, training, and start up, stated separately from the cost of equipment.

Section 13. Affidavits and Waivers. A [Any] Claim Request Form, Soil/Disposal/Treatment Claim Form, or Capital Equipment Claim Form received by the office on or after the effective date of this administrative regulation must be accompanied by:

(1) Either Payment Verification Affidavit Form A or Payment Verification Affidavit Form B; and

(2) If required by KRS 224.60-140(18), a Payment Waiver Form executed by each affected vendor and subcontractor.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Assistance Form (October 2000)" [(October, 1998)], PSTeAF #2;

(b) "Claim Request Form (October 2000)" [Claim Request (October, 1998)], PSTeAF #3;

(c) "Invoice Listing Form (October 2000)" [(July-1996)], PSTeAF #4;

(d) "Soil Disposal/Treatment Claim Form (October 2000)" [Request, (October-1998)], PSTeAF #9; [and]

(e) "Capital Equipment Claim Form (October 2000)" [Purchase and Rental Request, (October-1998)], PSTeAF #10;

(f) "Capital Equipment Preapproval Purchase/Rental Form (October 2000)", PSTeAF #11;

(g) "Payment Verification Affidavit Form A (October 2000)", PSTeAF #14;

(h) "Payment Verification Affidavit Form B (October 2000)", PSTeAF #15; and

(i) "Payment Waiver Form (October 2000)", PSTeAF #16.

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

RONALD B. MCCLOUD, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: December 6, 2000

FILED WITH LRC: December 6, 2000 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James M. Ellerbe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains the procedures to be followed by petroleum storage tank owner/operators and the agency in order to submit and proc-

ess applications for assistance and claims for reimbursement for costs, expenses, and other obligations incurred as the result of a release into the environment from a petroleum storage tank.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the orderly and consistent submittal to and processing of applications and claims by the agency, so that petroleum storage tank owner/operators can be reimbursed for appropriate costs, expenses and obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is the direct result of the mandate in KRS 224.60-130(2) to establish by administrative regulation the policy, guidelines and procedures to administer the petroleum storage tank environmental assurance fund, and to establish by administrative regulation the criteria to be met to be eligible to participate in the fund and receive reimbursement from the fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the fund's enabling legislation in that it spells out detailed procedures for all involved to follow in the application and claims processes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by adding 3 new forms to be incorporated by reference, and will also correct minor typographical and other errors in the existing regulation and material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment incorporates by reference the new affidavit and waiver forms specifically required by SB 21 (2000), now codified at KRS 224.60-140(18).

(c) How the amendment conforms to the content of the authorizing statutes: SB 21 (2000) is very specific as to the content of the affidavit and waiver forms, and the new forms to be incorporated by reference by this amendment contain the required content.

(d) How the amendment will assist in the effective administration of the statutes: The amendment incorporates by reference the forms to be furnished by the agency as required by SB 21(2000)

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the owners and operators of the approximately 2,800 petroleum storage tank facilities in the Commonwealth of Kentucky that have had a confirmed release of petroleum to the environment and are currently undergoing corrective action to address that release. These owner/operators are typically engaged in a wide variety of retail or transportation-related businesses at these facilities. The amended regulation will also, for the first time, directly affect the contractors, subcontractors, and vendors involved in the performance of corrective action at these facilities.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended regulation will require that petroleum storage tank owner/operators certify by affidavit that all subcontractors and vendors whose invoices comprise all or a portion of the owner/operator's claim for reimbursement have been paid as of the date of submittal of the claim, unless such subcontractors and vendors waive in writing their right to payment. This will have the effect of protecting such owner/operators from liens and other legal actions in the event the prime contractor does not timely pay the subcontractors and vendors. Subcontractors and vendors will complete waiver forms to accompany the owner/operator's claim for reimbursement on a voluntary basis if payment has not been made as of the date of submittal of the claim.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Although there will be additional affidavit and waiver forms accompanying claims for reimbursement, the agency does not believe that its administrative costs to process these claims will be materially affected.

(b) On a continuing basis: Although there will be additional affidavit and waiver forms accompanying claims for reimbursement, the agency does not believe that its administrative costs to process these claims will be materially affected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this proposed change to this administrative regulation is the petroleum storage tank environmental assurance fund, which is used to pay the administrative expenses of the agency, including the compensation of the claim reviewers who will be processing the claims that will include the new affidavit and waiver forms.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the proposed change to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly, nor does it indirectly increase any fees.

(9) Is tiering applied? No, tiering is not applied. KRS 224.60-140(18) imposes affidavit and waiver requirements uniformly on all persons filing claims for reimbursement and their subcontractors and vendors, and this regulation likewise will impose these requirements uniformly on these groups.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

Division of Securities

(Amended After Hearing)

808 KAR 10:410. Viatical settlement interests.

RELATES TO: KRS 292.340, 292.370, 292.410(1)(i) [292.400(14)]

STATUTORY AUTHORITY: KRS 292.330, 292.340, 292.370, [292.400(14);] 292.410(1)(i), 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. **KRS 292.340 provides that it is unlawful to offer or sell a security unless the security is registered under KRS Chapter 292, or the security or transaction is exempt, or the security is a covered security. This administrative regulation establishes the requirements for the registration of viatical settlement interests. KRS 292.330 provides that it is unlawful for an agent to transact business in Kentucky unless registered under KRS Chapter 292. This administrative regulation establishes the requirements for registration of an agent selling viatical settlement interests. [KRS 292.400(14) authorizes the commissioner to exempt from KRS 292.340 to 292.390 a security for which the commissioner finds that registration is not necessary or appropriate in the public interest or for the protection of an investor. This administrative regulation establishes a registration exemption for an offer or sale of a viatical settlement interest.]**

Section 1. Definitions. (1) ["Issuer" of a viatical settlement interest means a viatical settlement provider or other person that purchases or otherwise acquires a viatical settlement contract for the purpose of selling a viatical settlement interest in the contract; and does not include a broker-dealer, agent, viator, or insured:

(2)] "Viatical settlement contract" means a:

(a) Written agreement between a viator or insured and a viatical settlement provider for the sale, assignment, transfer, devise, or bequest to the viatical settlement provider by the viator or insured of all or a portion of the death benefit or ownership of a life insurance policy, for consideration that is less than the expected death benefit of the life insurance policy; or

(b) A contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, but does not include a contract for:

1. A loan by a life insurance company under the terms of a life insurance contract;

2. A loan secured by the cash value of a policy;

3. The assignment of a life insurance policy as collateral for a loan

to a bank, saving bank, savings and loan association, credit union, or other licensed lending institution;

4. The exercise by the insured of an accelerated benefits provision under the terms of the life insurance contract; or

5. The assignment, transfer, sale, devise, or bequest of a life insurance policy, for less than the expected death benefit, by the viator to a natural person if the person does not enter into more than one (1) agreement per calendar year.

[(3) "Viatical settlement financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a life insurance policy from a viatical settlement provider, credit enhancer, reinsurer, or person that is a party to a viatical settlement contract and that has a direct ownership in a life insurance policy that is the subject of a viatical settlement contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement contract and that has an agreement in writing with a viatical settlement provider to act as a participant in a viatical settlement financing transaction.]

(4) "Viatical settlement financing transaction" means a transaction in which a viatical settlement provider or a viatical settlement financing entity obtains financing for a viatical settlement contract, viaticated policy, or interests in a contract or policy including secured or unsecured financing, a securitization transaction or security offering either registered or exempt from registration under federal and state securities law, or a direct purchase of an interest in that policy, if that financing transaction complies with federal and state securities law.]

(2) [(5)] "Viatical settlement interest" means the entire interest or a fractional interest in a life insurance policy or in the death benefit under a life insurance policy that is the subject of a viatical settlement contract; but does not include the initial purchase from the viator by a viatical settlement provider.

(3) [(6)] "Viatical settlement provider" means a person, other than a viator or insured, that enters into a viatical settlement contract, including a person that:

(a) Obtains financing for the purchase, acquisition, transfer or other assignment of a viatical settlement contract, viaticated policy, or viatical settlement interest; or

(b) Sells, assigns, transfers, pledges, hypothecates, or disposes of a viatical settlement contract, viaticated policy, or viatical settlement interest.

(4) [(7)] "Viatical settlement purchase agreement" means a contract or agreement entered into by an investor [a viatical settlement purchaser] to purchase a viatical settlement interest for the purpose of deriving an economic benefit.

[(8) "Viatical settlement purchaser" means a person that, for the purpose of deriving an economic benefit, gives money or other consideration for a viatical settlement interest; but does not include an issuer, a viatical settlement financing entity, or a special purpose entity that is created solely to act as a financing source for the viatical settlement provider.]

(5) [(9)] "Viaticated policy" means a life insurance policy that has been acquired by a viatical settlement provider under a viatical settlement contract.

(6) [(10)] "Viator" means the owner of a life insurance policy insuring the life of an individual who enters or who seeks to enter a viatical settlement contract, but does not include:

(a) A viatical settlement provider; or

(b) A person that acquires a viaticated policy or a fractional interest in a viaticated policy from a viatical settlement provider or a subsequent investor [viatical settlement purchaser].

Section 2. Registration of Viatical Settlement Interests. (1) Except as established in subsection (2) of this section, an investment contract known as a viatical settlement interest may be registered under KRS 292.370 if:

(a) A registration statement containing the information established in Section 3 of this administrative regulation and a consent to service of process, if required under KRS 292.430, are filed with the commissioner;

(b) The filing fee required under KRS 292.380(5) is submitted to the commissioner; and

(c) Each investor is provided with the documents established in Section 4 of this administrative regulation.

(2) Registration under this administrative regulation shall not

be available to an issuer if the issuer; a predecessor or affiliate of the issuer; a director, officer, or general partner of the issuer; a beneficial owner of ten (10) percent or more of a class of the issuer's equity securities; a promoter of the issuer presently connected with the issuer in any capacity; an underwriter of the securities to be offered; or a partner, director, or officer of an underwriter of the securities to be offered;

(a) Has filed within the last five (5) years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the Securities and Exchange Commission;

(b) Has been convicted within the last five (5) years of a:

1. Felony;

2. Criminal offense involving fraud or deceit; or

3. Criminal offense in connection with the offer, purchase or sale of a security;

(c) Is currently subject to a state or federal administrative enforcement order entered within the last five (5) years finding fraud or deceit in connection with the purchase or sale of a security; or

(d) Is currently subject to an order, judgment or decree of a court of competent jurisdiction entered within the last five (5) years, temporarily, preliminarily, or permanently restricting or enjoining the subject of the order from engaging in or continuing to engage in a conduct or practice involving fraud or deceit in connection with the purchase or sale of a security. [Registration Exemption. (1) Except as provided in subsection (2) of this section, the offer and sale of a viatical settlement interest shall be exempt from KRS 292.340 to 292.390 if the offer or sale meets the requirements established in this administrative regulation.

(2) The registration exemption established in subsection (1) of this section shall not be available to an issuer of a viatical settlement interest if the issuer or a partner, officer, or director of the issuer, or a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the issuer:

(a) Has filed an application for registration with the department which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;

(c) Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;

(d) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative or an order denying effectiveness to a registration statement where that person was or could be deemed to have been a control person of the issuer;

(f) Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:

1. An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;

2. An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;

3. A United States Postal Service fraud order;

4. A cease and desist or other administrative order entered after notice and opportunity for hearing by the commissioner, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or

5. An order by the Commodity Futures Trading Commission de-

nying, suspending, or revoking registration under the Commodity Exchange Act; or

(g) Has engaged in dishonest and unethical practices in the securities business;

(3) Pursuant to KRS 292.410(1)(i)5 the registration exemption at KRS 292.410(1)(i) shall not be available for the offer or sale of a viatical settlement interest.]

Section 3. Filing Requirements - **Registration Statement.** (1) The registration statement required under Section 2(1)(a) of this administrative regulation shall contain the following information:

(a) The name, address, and telephone number of the issuer, and the name of the contact person of the issuer;

(b) The articles of incorporation of the issuer, if a corporation;

(c) The name and address of each director and officer of the issuer along with the person's principal occupation for the past five (5) years;

(d) A general description of the program and securities offered by the issuer, but not including details of specific viaticated policies or viatical settlement contracts;

(e) A description of the nature and amount of commissions, finders' fees, or other remuneration paid directly or indirectly for soliciting a sale of a viatical settlement interest in Kentucky;

(f) The issuer's most recent audited income and expense statement and balance sheet;

(g) A blank copy of the Viatical Disclosure Document Parts A and B to be furnished under Section 4 of this administrative regulation to an investor;

(h) A copy of all offering materials including any prospectus, pamphlet, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a viatical settlement interest;

(i) A statement indicating the procedures that the agents of the issuer will use to determine the suitability of the investment for an investor and a copy of any documents used to determine suitability; and

(j) A list of individuals that will be registered as agents of the issuer in Kentucky, including the business address and CRD number, if applicable, of each individual. [Claim of Exemption: (1)(a) The exemption established in Section 2(1) of this administrative regulation shall apply if:

1. The issuer files a written claim of exemption with the department at least ten (10) days prior to the first sale of a viatical settlement interest in Kentucky;

2. The commissioner does not determine, by order, within the ten (10) days that the exemption is unavailable; and

3. At the time of filing the claim of exemption, the issuer submits a \$250 filing fee to the commissioner.

(b) The claim of exemption shall include:

1. The name, address, telephone number, and name of contact person of the issuer;

2. Articles of incorporation of the issuer, if a corporation;

3. A general description of the program and securities offered by the issuer, but not including details of specific viaticated policies or viatical settlement contracts;

4. A description of the nature and amount of commissions, finders' fees, or other remuneration paid directly or indirectly for soliciting a sale of a viatical settlement interest in Kentucky;

5. The issuer's most recent audited income and expense statement and balance sheet;

6. A copy of the Viatical Disclosure Document Part A to be furnished under Section 4(2)(a) of this administrative regulation to a viatical settlement purchaser;

7. A copy of all offering materials including any prospectus, pamphlet, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a viatical settlement interest;

8. A statement indicating the procedures that the agents of the issuer will use to determine the suitability of the investment for a viatical settlement purchaser and a copy of any documents used to determine suitability; and

9. A list of individuals that will be registered as agents of the issuer

in Kentucky, including the business address and CRD number, if applicable, of each individual.]

(2) The issuer shall promptly amend its **registration statement** [claim of exemption] if any of the information becomes inaccurate or incomplete in any material respect, including if the issuer hires new agents.

(3) **The effective period of a registration statement filed under this administrative regulation is established pursuant to KRS 292.380(1) and (6).**

(4) The information and documents required under KRS 292.370(2)(a) through (g) shall be omitted from a registration statement filed pursuant to this administrative regulation unless otherwise required in this administrative regulation.

(5) The commissioner may deny, suspend, or revoke a registration pursuant to KRS 292.390. [The commissioner may by order require an issuer to include additional information in its claim of exemption if the commissioner determines that the information is necessary for the protection of investors.

(4) A claim of exemption under this section shall be effective for a period of twelve (12) months from the date the exemption is received for filing with the commissioner.]

Section 4. Disclosure Requirements **for Sale of Viatical Settlement Interests.** (1) The following documents shall be provided to an investor in connection with the sale of an investment contract known as a viatical settlement interest: [The exemption established in Section 2(1) of this administrative regulation shall apply if the disclosures required by KRS 292.320(1)(b) and by this section are made to a prospective viatical settlement purchaser prior to the time the viatical settlement purchaser executes a viatical settlement purchase agreement or at the time specified in this section:

(2)(a) At least forty-eight (48) hours prior to the time a prospective investor [viatical settlement purchaser] executes a viatical settlement purchase agreement, the prospective investor [purchaser] must receive a completed Viatical Disclosure Document Part A equivalent to Kentucky Form 10:410A.

(b) On or before the date when the investor [viatical settlement purchaser] is presented with a specific viatical settlement contract under an executed viatical settlement purchase agreement, the investor [viatical settlement purchaser] must receive a completed Viatical Disclosure Document Part B equivalent to Kentucky Form 10:410B.

(2) [(e)] The completed Viatical Disclosure Document Part A and B given to an investor [a viatical settlement purchaser] shall reasonably conform to the formatting of Kentucky Forms 10:410A and 10:410B with respect to font size, boldface type, and line spacing.

Section 5. Rescission. (1) **Investor's** [Viatical settlement purchaser's] right of rescission.

(a) **An investor** [A viatical settlement purchaser] shall have the right to rescind a viatical settlement purchase agreement at any time until ten (10) days after the receipt by the investor [purchaser] of a completed Viatical Disclosure Document Part B.

(b) A rescission by an investor [a purchaser] under paragraph (a) is sufficient if addressed to the entity designated in the Viatical Disclosure Document Part B to receive the notice and the notice is either postmarked or received by the entity within ten (10) days after the receipt by the investor [purchaser] of the completed Viatical Disclosure Document Part B.

(2) Required offer of rescission.

(a) Within ninety (90) days after the execution of a viatical settlement purchase agreement by an investor [a viatical settlement purchaser], the issuer shall make an offer of rescission to the investor [viatical settlement purchaser] if, during that period, the issuer has not identified a specific viatical settlement contract that is suitable for the investor [purchaser] and has not delivered a completed Viatical Disclosure Document Part B to the investor [purchaser].

(b) The issuer shall notify the investor [viatical settlement purchaser] of the offer of rescission on Kentucky Form 10:410 or its equivalent. The notice of the offer of rescission shall reasonably conform to the formatting of Kentucky Forms 10:410 with respect to font size, boldface type, and line spacing.

(c) An acceptance by an investor [a viatical settlement purchaser] of an offer of rescission is valid if the acceptance is either

postmarked or received by the entity designated in the offer within ten (10) days after the investor [viatical settlement purchaser] receives the offer.

Section 6. Agent Registration. An agent of an issuer of an investment contract known as a viatical settlement interest [An agent who, directly or indirectly, receives a commission or remuneration in connection with the offer or sale of a viatical settlement interest] shall be registered pursuant to KRS 292.330 as an agent of the issuer and shall submit a completed Form U-4 to the commissioner along with [provide to the commissioner] proof of passing one (1) of the following examinations administered by the National Association of Securities Dealers:

- (1) The Series 63 Uniform Securities Law Examination; or
- (2) The Series 66 Uniform Combined State Law Examination.

Section 7. Waiver of Viatical Settlement Interest Requirements. Upon the request of an issuer, the commissioner may by order waive a requirement of this administrative regulation if the commissioner determines the waiver to be in the public interest and that the requirement to be waived is not necessary for protection of investors. The issuer bears the burden of proof to satisfy the commissioner that the waiver is in the public interest and that the requirement to be waived is not necessary for protection of investors.

Section 8. Availability of KRS 292.410(1)(i) for Viatical Settlement Interest. An issuer may rely on the exemption provided at KRS 292.410(1)(i) for the offer or sale of a viatical settlement interest if the issuer:

(1) Otherwise meets the conditions and requirements of KRS 292.410(1)(i); and

(2) Prior to any sale in Kentucky, the issuer files with the commissioner a claim of exemption containing the information set forth in Section 3(1) of this administrative regulation. [Denial, Suspension, or Revocation of Claim of Exemption. (1) The commissioner may by order deny, suspend, or revoke a claim of exemption with respect to a specific security or transaction if the commissioner determines that the issuer has failed to comply in a material respect with the requirements of this administrative regulation. Except as provided in subsection (2) of this section, the commissioner may not enter an order without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

(2) The commissioner may by order summarily deny, suspend, or revoke a claim of exemption pending final determination of any proceeding under this subsection if the commissioner determines that a summary order is necessary to prevent immediate and irreparable harm to investors.]

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form 10:410A (December [August] 2000 edition), Viatical Disclosure Document Part A;
- (b) Form 10:410B (December [August] 2000 edition), Viatical Disclosure Document Part B; and
- (c) Form 10:410 (December [August] 2000 edition), Offer of Rescission - Viatical Settlement Interest.

(2) This material may be inspected, copied, or obtained at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

COLLEEN KEEFE, Director

APPROVED BY AGENCY: December 7, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Colleen Keefe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for the sale of viatical settlement interests in Kentucky. It sets forth requirements for registering an offering of the

interests. It establishes disclosure requirements for the sale of viatical interests in Kentucky and provides for agent registration.

(b) The necessity of this administrative regulation: This regulation is necessary to provide a means of effectively regulating the sale of viatical settlement interests in Kentucky and to impose reasonable filing requirements upon issuers of those securities. This regulation fosters full and fair disclosure of all material information to the prospective investor which is the overriding principle of securities regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Existing statutory provisions require registration of securities sold in Kentucky and registration of the agents selling those securities. Antifraud provisions under the Securities Act, in effect, require full disclosure of all material information to an investor in a security.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: If an issuer fails to provide the required disclosures or fails to otherwise comply with the requirements of the regulation, the commissioner has a ready basis for action against the issuer.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation and not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation will affect individuals and businesses who sell interests in viatical settlement contracts in Kentucky or who purchase such interests for investment. The department is unable to determine the number of such individuals or businesses.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The regulation does not impose any additional requirements that are not already imposed under the Securities Act of Kentucky. The regulation will ease the existing filing requirements related to the sale of securities in Kentucky by tailoring the filing requirements to this type of security and eliminating certain filing requirements that do not apply.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Cost is negligible.

(b) On a continuing basis: Cost is negligible.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is revenues generated by licensing fees paid to the department and fines paid by licensed and unlicensed persons for violations of the Securities Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in existing fees or funding is necessary to implement this regulation; however a new fee is necessary to cover the costs of processing the filings required by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The registration fee is the same fee required for other registrations that require similar filings with the department.

(9) TIERING: Is tiering applied? Tiering is not applied since the regulation applies to all persons who sell interests in viatical settlement contracts in Kentucky.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(Amended After Hearing)

902 KAR 4:120. Health Access Nurturing Development Services (HANDS) Program.

RELATES TO: KRS 194A.030(4), 211.690 [Chapter 211]

STATUTORY AUTHORITY: KRS [194A.030;] 194A.050(1) [; 211.690]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.690

authorizes the Cabinet for Health Services to implement a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period until the child's third birthday. This administrative regulation establishes the eligibility criteria, services, provider qualifications, and hearing rights for participants of the Health Access Nurturing Development Services (HANDS) Program.

Section 1. Definitions. (1) "HANDS" means Health Access Nurturing Development Services, a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday.

(2) "Authority" means the Early Childhood Development Authority as established in KRS 200.700.

(3) "Provider" means a local agency subscribing to staff and training requirements, program model and reporting requirements of the HANDS Program and agreeing to participate as a HANDS provider.

(4) "Program model" means a model of home visitation that meets the twelve (12) critical elements of home visitation.

(5) "Participant" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(6) "Standardized assessment tool" means the program adopted tool to determine the level of ~~[burden or]~~ need of the pregnant woman or parent ~~[for the program]~~.

(7) "Department" means the Department for Public Health or its designated representative.

(8) "Home visitor" or "family support worker" or "FSW" [(FSW)] means a:

(a) High school graduate or holder of a GED who:

1. Is at least eighteen (18) years of age;

2. Has received training in:

a. Ongoing assessment of family strengths and needs;

b. Service plan development;

c. Home visiting;

d. Coordination of services; and

e. Evaluation; and

3. Is supervised by a public health nurse or licensed social

worker; [Person who has a high school diploma or GED, is eighteen (18) years of age or older, and has received training in screening, ongoing assessment of family strengths and needs, service plan development, home visiting, coordination of services and evaluation. The FSW shall be supervised by a public health nurse or licensed social worker;]

(b) Public health nurse who has a valid Kentucky Board of Nursing license as a registered nurse or advanced registered nurse practitioner; or

(c) 1. Licensed social worker who meets the requirements for licensure by the State Board of Examiners of Social Work;

2. An individual with a masters degree in social work;

3. A social worker with a bachelor's degree in social work from an accredited institution; ~~[or]~~

(d) [4:] A graduate of a four (4) year program in a social or behavioral science or a related field and have one (1) year experience of performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or

(e) An associate degree in an early childhood education field and home visitation model training [family studies, early childhood education, early childhood special education, or a related early child development curriculum].

Section 2. Eligibility Criteria. (1) In order to receive a service established in Section 4 of this administrative regulation, an individual shall be:

(a) A pregnant woman who has not reached her 20th birthday and who will be a first-time parent;

(b) A pregnant woman who is at least twenty (20) years old, will be a first-time parent and a risk is deemed likely for the pregnancy or the infant;

(c) An infant or toddler, up to his third birthday, of an individual identified in paragraph (a) or (b) of this subsection;

(d) A firstborn up to twelve (12) weeks of age whose family is

determined to be at [have] risk; or

(e) A first-time father or guardian of a child identified in paragraph (c) or (d) of this subsection.

(2) Participation in the HANDS Program shall be voluntary.

(3) Participation in the HANDS Program shall be terminated if one (1) of the following occurs:

(a) Death of the fetus;

(b) The family elects to withdraw from the program;

(c) The family moves out of state;

(d) Contact with the family is lost;

(e) The family repeatedly fails to participate in program activities;

(f) Death of the infant; or

(g) The goals established for the family are met.

Section 3. Provider Qualifications. (1) A HANDS service shall be provided by a local health department or a subcontractor.

(2) A local health department shall meet the requirements to provide HANDS services if:

(a) Its staff or contractor receives training provided by the department;

(b) It assures that appropriate staff meet the licensure requirements of the department pursuant to Section 1(8)(b) or (c) of this administrative regulation;

(c) It assures supervision by licensed personnel pursuant to Section 1(8)(b) and (c) of this administrative regulation;

(d) It reports program data on a schedule as directed by the department; and

(e) It meets the twelve (12) critical elements of home visitation programs.

Section 4. Services: The HANDS Program shall consist of the following services:

(1) Screening. A screening shall include the following components:

(a) Using the standardized screening tool, a provider shall determine eligibility of an applicant by:

1. Face-to-face interview; or

2. Evaluation of health records. [:

1. Shall conduct a face-to-face interview with an individual identified in Section 2 of this administrative regulation in order to evaluate his eligibility for HANDS services; or

2. Shall use a health record in order to conduct an evaluation of an individual identified in Section 2 of this administrative regulation in order to determine his eligibility for HANDS services;]

(b) If an individual's screening indicates eligibility ~~[that he is eligible]~~ for additional HANDS services, the individual [he] shall be referred for an assessment to a social worker or a registered nurse, employed directly or contracted by the department; and

(c) If an individual's screening indicates ineligibility ~~[that he is ineligible]~~ for additional HANDS services, the individual [he] shall be provided with community resource and referral information;

(2) Assessment.

(a) An assessment shall consist of the following components:

1. A comprehensive needs assessment, ~~[which shall be]~~ obtained by conducting a face-to-face interview with the child, mother, and family, ~~to [:- This assessment shall]~~ include information regarding the parent's:

a. Childhood experience;

b. Lifestyle behaviors and mental health;

c. Experience and expectations for parenting;

d. Coping skills;

e. Support system;

f. Stress and anger management skills;

g. Expectations of the infant's developmental milestones and behaviors;

h. Plans for the child's discipline;

i. Perception of the new infant; and

j. Bonding and attachment to the infant.

2. Arrangement for ~~[the]~~ delivery of needed [the] services, as determined by [to be needed as identified in] the assessment;

(b) An assessment shall be conducted by:

1. A social worker; [or]

2. A registered nurse; [and]

3. A graduate of a four (4) year program in a social or behavioral science or a related field and have one (1) year experience of performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or

4. An associate degree in an early childhood education field and home visitation model training.

(c) If an assessment of an individual results in a determination that the individual meets one (1) of the criteria in Section 2(3) of this administrative regulation, home visitation services established in subsection (3) of this section shall not be provided. [-]

(3) Home visitation may take place in the client's home or another community site if justified in the record. A home visitation shall include the following:

(a) Monitoring of the child's, mother's, and family's progress by:

1. Making referrals to community resources;
2. Tracking appointments to ensure they are being kept;
3. Performing follow-up services as identified by the provider; **and**

[or]

4. Performing periodic evaluations of the participant's changing needs; [-]

(b) The preparation and maintenance of case records which shall be documented with contacts, services needed, reports, and progress;

(c) Consultations; and

(d) Crisis assistance.

(4) Service frequency shall be provided in accordance with the level of need of the parent or family. [-]

(5) The frequency of visitation shall be lessened as the family meets goals agreed to by the provider and the participant. [-and]

(6) Between the second and third birthday, home visitation services shall be limited to a child whose family does not progress beyond Level I of the assessment tool.

Section 5. Appeal Rights. (1) A provider shall notify an individual who does not meet criteria for admission or continuation in the program or who has had a service discontinued, in writing, within ten (10) days of the denial or discontinuance.

(2) [If] An individual **wishing** [wishes] to appeal an adverse action by the agency **shall notify the department**, within thirty (30) days of the date of the notice identified in subsection (1) of this section **that he requests** [-he shall notify the department that he wishes to request] a hearing.

(3) Notice of an administrative hearing shall be provided in accordance with KRS 13B.050.

(4) The administrative hearing process shall be conducted in accordance with KRS 13B.080 through 13B.160.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Twelve (12) Critical Elements of Home Visitation Programs;

(b) Referral Record Screen Consent Form (ACH-301), 7/00 edition;

(c) HANDS Screening Tool, 5/1/00 edition;

(d) HANDS Assessment Tool, 5/1/00 edition;

(e) Levels form; and

(f) Every Child Succeeds Screening and Assessment Tool, 3/8/00 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

FILED WITH LRC: December 14, 2000 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Curtis Rowe, 564-4830 or 564-2154

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 211.690 authorizes the Cabinet for Health Services to implement a voluntary

statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period until the child's third birthday. This administrative regulation establishes the eligibility criteria, services, provider qualifications and hearing rights for participants of the Health Access Nurturing Development Services (HANDS) Program.

(b) The necessity of this administrative regulation: To enable the Cabinet for Health Services to implement a home visitation program for at-risk families.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the eligibility criteria, services, provider qualifications and hearing rights for participants of the Health Access Nurturing Development Services (HANDS) Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation provides requirements for establishment of a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation allows the program to serve approximately 4,000 first time Kentucky families through home visitation services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Expected benefits include: Identify effects on public health and environmental welfare of the geographic area in which the program is implemented and on Kentucky. Anticipated short term and long term effects include a reduction in infant mortality, early entry into prenatal care, a reduction in premature infants, establishment of a medical home, a decrease in child abuse and neglect and other short and long term outcomes.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Approximately 8.5 million in the first year. (\$2.9 million in Medicaid funds and \$5.5 million in tobacco settlement funds).

(b) On a continuing basis: Approximately \$15 million per year. (\$5.5 million in Medicaid funds and (\$9.5 million in tobacco settlement funds.)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Medicaid and tobacco settlement dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The only fees relate to service fees. Fees are being set based on cost. Costs will be monitored and fee increases or decreases will be requested as needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Does not directly establish fees.

(9) 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.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 2000

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)

12 KAR 5:010. Licenses.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.795—to 260.805]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes a procedure to license a person or entity who is qualified as a milk handler, laboratory, sampler-weigher, tester, or transfer station. [The Director of the Agricultural Experiment Station, University of Kentucky is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, milk testers and milk weighers and samplers. The function of the administrative regulation is to license those who are adjudged and qualified as a milk buyer, tester or weigher and sampler.]

Section 1. (1) License to handle milk, laboratory license, and transfer station license. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and in compliance with KRS 260.775 to 260.845, the director may issue a license to handle, laboratory license, or transfer station license. Each license shall be displayed accordingly:

(a) A current license to handle milk shall be prominently displayed at each handling location;

(b) A current laboratory license shall be prominently displayed at each laboratory location; and

(c) A current transfer station license shall be prominently displayed at each transfer station location.

(2) Temporary license to sample and weigh milk. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and in compliance with KRS 260.775 to 260.845, the director may issue a 120-day, nonrenewable temporary license to sample and weigh milk.

(a) A person issued a temporary license to sample and weigh milk shall be provided informational material by the director to notify him of proper sampling and weighing procedures. He shall become familiar with the informational material and shall perform the procedures under the supervision of a licensed sampler-weigher until he is competent of proper procedures. When he has become familiar with and complies with proper procedures, he may sample and weigh milk without immediate supervision. He shall carry the temporary license to sample and weigh when sampling and weighing milk.

(b) A person issued a temporary license to sample and weigh milk shall be scheduled for and required to attend a one (1) day training school and take a written examination administered by the director. Upon scoring a minimum of seventy (70) percent on the written examination, a license to sample and weigh milk may be issued. The person shall carry the license to sample and weigh when sampling and weighing milk.

(3) Temporary license to test milk. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and competent and in compliance with KRS 260.775 to 260.845, the director may issue a 120-day nonrenewable temporary license to test milk.

(a) A person issued a temporary license to test milk shall be provided informational material by the director to notify him of proper testing procedures. He shall become familiar with the informational material and shall perform the testing procedures for which he seeks approval under the supervision of a licensed tester until he is competent of proper procedures. When he has become familiar with and complies with proper procedures, he may test milk without immediate supervision. The person shall conspicuously post the temporary license to test in the laboratory where testing is performed or carry the

temporary license to test when he is in the act of testing milk.

(b) A person issued a temporary license to test milk shall demonstrate competency in milk testing procedures for which he seeks approval to the director and shall take a written examination administered by the director. Upon demonstrating competency and scoring a minimum of seventy (70) percent on the written exam, a license to test milk may be issued. The person shall conspicuously post the license to test in the laboratory where testing is performed or carry the license to test when he is testing milk.

(4) Renewal for a license to sample and weigh and renewal for a license to test. Upon receipt of an accurately-completed renewal application with fee as required by KRS 260.815, and if the applicant is in compliance with KRS 260.775 to 260.845, the director may issue a renewed license to sample and weigh or a renewed license to test. An applicant may renew a lapsed license for up to three (3) years past the expiration date by paying back-fees for each year and one (1) penalty fee provided for in KRS 260.992(3).

(5) All licenses issued under the authority of KRS 260.775 to 260.845 shall expire on June 30 of each year. The licenses shall be renewed on or before July 1 by accurately completing and submitting an application with the appropriate fee to the director. Applications shall be provided by the director.

(6) Reciprocity. The director may reciprocate with other states and issue a license to sample and weigh or a license to test upon submission of satisfactory evidence that the requirement for licensure in the other state is equivalent to the requirements of KRS 260.775 to 260.845. The director may require an applicant for reciprocity to pass an examination to establish his competency. Applicants for reciprocity shall be required to submit an accurately-completed application with fee to the director.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License to Handle Milk", October 2000, Division of Regulatory Services;

(b) "Application for Laboratory License", October 2000, Division of Regulatory Services;

(c) "Application for Transfer Station License", October 2000, Division of Regulatory Services;

(d) "Application for Temporary License to Sample and Weigh Milk", October 2000, Division of Regulatory Services;

(e) "Application for Temporary License to Test Milk", October 2000, Division of Regulatory Services;

(f) "Renewal Application for License to Sample and Weigh Milk", October 2000, Division of Regulatory Services; and

(g) "Renewal Application for License to Test Milk", October 2000, Division of Regulatory Services.

(2) These materials may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [A current license to buy and a current license to test milk shall be prominently displayed (posted separately) in each buying place.

Section 2. A current license to weigh and sample milk in bulk tanks from producers shall be displayed at the buying place at which the licensee normally delivers milk. A second copy shall be carried by the licensee when in the act of weighing, sampling, or delivering producer's milk.

Section 3. All licenses issued under the authority of this law expire on June 30 of each year. They are required to be renewed on or before July 1 by mailing an application properly filled out and signed with required fee accompanying it. A notice to renew with application blank is sent out to each current license holder on or about June 15. In case such application blank is not received by June 25, the license holder is directed to write to UK Regulatory Services, Kentucky Agricultural Experiment Station, Lexington, Kentucky 40506, and request that one be sent. The renewal fee is shown on the application.

~~Section 4. In order that new operators may legally sample and weigh milk or sample and measure milk they shall make application on a form furnished by the Experiment Station and the fee called for on the application be paid. Applicants will be issued a ninety (90) day temporary nonrenewable license with approved procedures for weighing (measuring) and sampling milk for pay purposes. Every three (3) months of the year all persons holding a temporary license will attend a one (1) day training school and take a written examination, given by UK Regulatory inspectors and if completed successfully will be issued a permanent license. Temporary licenses held by samplers and weighers who fail to present themselves for a written examination after due notification or found unqualified will have their license revoked after which they cannot legally sample and weigh milk for producers.]~~

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 2001 at 10 a.m. Eastern Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: Chris Thompson, Milk Coordinator, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, College of Agriculture, Lexington, Kentucky 40546-0275, Phone (859) 257-2785, FAX (859) 323-9931.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Thompson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Not applicable

(b) The necessity of this administrative regulation: Not applicable

(c) How this administrative regulation conforms to the content of the authorizing statutes: Not applicable

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates previous licensing procedures and establishes a procedure for licensing laboratories and transfer stations.

(b) The necessity of the amendment to this existing administrative regulation: This amendment establishes a procedure to license a person or entity who is qualified as a milk handler, laboratory, sampler-weigher, tester, or transfer station.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to license requirements outlined in KRS 260.775 to 260.845 and 260.992.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to establish licensing procedures for licensees defined in KRS 260.775.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Type and number of entities affected: 400 sampler-weighers, 60 testers, 20 handlers, 20 laboratories, and 10 transfer stations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment

will have a minimal impact on licensees.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This amendment will result in little or no increase in cost to implement because most of the aforementioned persons and entities are currently licensed.

(b) On a continuing basis. There will be no additional cost associated with this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided for enforcement of this administrative regulation by KRS 260.845.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not result in a need for increased fees or funding for appropriate implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. Licensing requirements are equally applicable to all milk sampler-weighers, testers, handlers, laboratories, and transfer stations.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 5:020. Testing.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.800, 260.825]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes uniform standards and approved procedures and equipment for the analysis of milk components by licensed laboratories and testers. (The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk testers. The function of this administrative regulation is to provide uniform standards, approved procedures, and equipment for analysis of milk components by licensed testers.)

Section 1. Laboratory Facilities and Equipment. (1) A licensed laboratory's facilities shall meet the criteria described in Chapter 2.3 of "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992.

(2) A licensed laboratory shall have established procedures for monitoring equipment performance and preventative maintenance. Specialized instrumentation shall be operated by the manufacturer's recommended procedures for operation and maintenance. Adequate records to document equipment performance monitoring and maintenance shall be kept. As applicable, equipment and supplies used by laboratories shall meet the criteria described in Chapter 2.4 of "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992.

Section 2. Approved Testing Methods. (1) A laboratory and tester licensed by the director shall be approved for the methods of analysis routinely used for milk component testing. If the laboratory and tester are approved for an electronic method of analysis, they shall also be approved for any intralaboratory reference method used to monitor the electronic equipment.

(2) Methods of analysis used for testing milk samples for pay purposes or as reference methods include:

(a) Methods in "Official Methods of Analysis of AOAC International", Volume II, Chapter 33, 17th Edition, 2000;

(b) Methods in "Standard Methods for the Examination of Dairy

Products", 16th Edition, 1992; and

(c) Methods of analysis scientifically proven to be acceptable and approved by the director.

Section 3. Electronic Equipment. (1) Laboratories using electronic milk testing equipment associated with approved procedures shall maintain the following supplies and records:

(a) A thermostatically-controlled, circulatory water-bath of suitable size to maintain milk samples in a temperature range of 40-43° C (104-109.4° F). A milk sample being warmed in the water-bath shall not:

1. Remain in the water-bath in excess of forty (40) minutes prior to being tested; or

2. Be tested for payment purposes if the sample "oils off" while in the water-bath; and

(b) An approved electronic component testing instrument including:

1. All required accessories and reagents; and

2. An instrument operation manual.

(2) Control samples. A minimum of four (4) control samples of unhomogenized milk shall be analyzed daily before routine testing begins. The control samples shall cover the component ranges of samples typically analyzed with the instrument. Control samples for milk fat analysis shall be in the fat range of two (2) to six (6) percent.

(a) The control samples shall be prepared and test results determined for each component tested for pay purposes by recognized procedures or those procedures approved by the director.

(b) Control samples shall be physically handled in a manner to ensure their integrity and stored in a temperature range of 0.5-4.4°C (33-40° F). Control samples to be stored more than seventy-two (72) hours shall be preserved with an approved preservative. Control samples shall be discarded if they appear to be churned, "oiled off" or spoiled.

(3) Daily performance checks. Written procedures shall be established to monitor electronic milk testing equipment for accuracy each day before testing begins. Minimum requirements for these procedures include:

(a) Zero check. Zero the machine for all components as prescribed by the instrument manufacturer. Run a single, unhomogenized milk sample through the machine at least eleven (11) times. Zero the machine again. Within two (2) cycles the instrument shall not deviate greater than 0.02 percent units from the original zero reading.

(b) Repeatability check. Ten (10) consecutive readings on a single, well-mixed, unhomogenized milk sample shall be made for each component being tested for pay purposes. The repeatability check shall be acceptable when the comparison range of ten (10) consecutive readings is above or below 0.04 percent for each of these components. The sample used between the zero checks in paragraph (a) of this subsection may be used for the repeatability check.

(c) Accuracy check. A subsample from each of the control samples shall be analyzed to obtain readings for each component tested for pay purposes. These results shall not differ from the control sample by more than 0.09 percent units for total solids and 0.05 percent units for each other component when compared to the established values of the control samples.

(d) Hourly check. An accuracy check as described in paragraph (c) of this subsection shall be analyzed on at least one (1) sample each hour during which samples are tested for pay purposes.

(e) Electronic instruments not meeting the prescribed testing criteria shall not be used to test permitted producer's samples for pay purposes. Deficiencies shall be investigated and corrective action taken. A record of any corrective action shall be maintained for two (2) years.

(4) Calibration requirements.

(a) Electronic instrument calibrations shall be required when:

1. The instrument is installed or significantly moved;

2. The daily performance checks fail and cannot be corrected by other means; and

3. When any part that may affect proper operation of the instrument has been replaced, rebuilt, or adjusted.

(b) A calibration shall be evaluated for accuracy:

1. At regular intervals not to exceed a thirty (30) day period; and

2. Using a minimum of eight (8) milk samples that shall cover the component ranges of samples typically analyzed with the instrument. These samples shall be in the milk fat range of two (2) to (6) percent.

(c) Electronic instruments shall be calibrated according to the manufacturer's instructions using milk samples with known component values as determined by an approved reference method. Laboratories may use approved, commercially-prepared calibration samples in lieu of preparing their own reference calibration samples.

Section 4. Wild Tests. (1) A "wild" test is defined as a test result for a producer's bulk-tank milk sample that is dissimilar to other test results for the producer during the pay period and for which the cause of the difference(s) cannot be determined.

(2) Each laboratory shall have written specifications for determining a "wild" test. Specifications for "wild" tests shall not exceed 0.50 percent units when comparing milk fat test results between or among samples for a permitted producer.

(3) "Wild" tests shall not be used for pay purposes and shall be conspicuously identified within laboratory test records.

Section 5. Check Samples. Periodically, the director may provide check samples to a licensed laboratory for test result comparisons and monitoring purposes. A licensed tester at the laboratory shall test each sample for components used for pay purposes using approved methods routinely utilized by the tester. The tester's results shall be provided to the director within three (3) working days of receipt of the samples. The licensed laboratory is responsible for returning all check sample shipping containers and equipment to the director.

Section 6. Laboratory Records. (1) Laboratory records shall be kept in a manner consistent with 12 KAR 5:070, Section 2, and shall be retained for a two (2) year period.

(2) Equipment records. Records of the operation and maintenance of each electronic instrument shall include:

(a) Maintenance records;

(b) Daily performance check records; and

(c) Complete calibration records.

(3) Test records. All records of tests to be used for pay purposes shall be original and recorded as tests are conducted.

(a) Records of retests and special tests shall be conspicuously identified.

(b) A licensed tester shall be responsible for the accuracy of test records for samples he tests for pay purposes.

Section 7. Sample Age. A permitted producer's sample being tested for pay purposes shall be tested within seventy-two (72) hours from the time of procurement, as identified on the sample container, unless the sample is preserved with an approved preservative.

Section 8. Hours of Operation. A licensed laboratory that is not open during the normal business hours of Monday through Friday, 8 a.m. to 4:30 p.m. shall submit a monthly testing schedule to the director one (1) month in advance.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Official Methods of Analysis of AOAC International", Volume II, Chapter 33, 17th Edition, 2000; and

(b) "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992.

(2) These materials may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. (The "Babcock Test," as described in "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984 is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat.

Section 2. The "Milkotester" method, as described in "Methods of Analysis—Association of Official Analytical Chemists", 14th Edition, 1984 is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat.

Section 3. The "Infrared" method, as described in "Methods of Analysis -- Association of Official Analytical Chemists," 14th Edition, 1984 is declared an official method for use in Kentucky and shall be performed in accordance with procedures approved by the director or his agents for the analysis of milk fat, protein, lactose, and total solids components of raw milk. Solids not fat (SNF) to be determined as the difference between total solids and milk fat as described in "Methods of Analysis -- Association of Official Analytical Chemists," 14th Edition, 1984.

Section 4. (1) A person shall satisfactorily pass an examination issued by the director or his agents on the Babcock method of milk fat analysis prior to becoming a licensed tester using the Babcock method.

(2) A person shall satisfactorily pass an examination issued by the director or his agents on both the Babcock and Milkotester methods of milk fat analysis prior to becoming a licensed tester for the Milkotester method.

(3) A person shall satisfactorily pass an examination issued by the director or his agents on both the Babcock and "Infrared" methods of analysis prior to becoming a licensed tester for the "Infrared" method of component analysis.

(4) In order that new operators may legally test until such time as they may appear for examination, they may secure a temporary permit in lieu of license. To secure this permit it is necessary that application be made on the form furnished by the Agricultural Experiment Station and fee called for on the application form paid. Licenses will be issued to holders of permits who pass satisfactory examinations. Testers failing on their first examination may have their permits extended one (1) time only. Permits may be extended if a legitimate excuse for not appearing is received by the Agricultural Experiment Station within five (5) days after the date of the examination at which the holder was notified to appear. All other permits of testers notified for examination become null and void and their holders cannot legally test further.

Section 5. Each record sheet of milk fat tests results is required to be dated and signed by the licensed tester(s). If a book or sheet with columns for more than one (1) series of tests covering different periods of time is used, the licensed tester(s) is to date and sign each column immediately after tests recorded therein are finished. These original sheets are to be permanent records and are required to be kept on file with other records of weights and payments for twelve (12) months.

Section 6. Reference Methods. Milk buyers may purchase commercially prepared reference milk samples in lieu of making their own reference milk samples for the calibration of Milkotesters and infrared milk analyzers for fat, protein, lactose, and total solid components of raw milk. Solids not fat (SNF) shall be determined as the difference between total solids and milk fat. Commercial laboratories preparing reference milk samples shall use only approved methods as listed below for each milk component:

(1) Reference methods approved by the director, or his agents, for milk fat analysis shall be the "Babcock" method and the "Mojonnier" method as described in "Methods of Analysis -- Association of Official Analytical Chemists," 14th Edition, 1984.

(2) Reference methods approved by the director, or his agents, for milk protein analysis shall be the "Kjeldahl" nitrogen method as described by "Methods of Analysis -- Association of Official Analytical Chemists," 14th Edition, 1984.

(3) The reference method approved by the director, or his agents, for milk lactose analysis shall be the "Polarimetric Method" as described by "Methods of Analysis -- Association of Official Analytical Chemists," 14th Edition, 1984."

(4) All Kentucky milk buying locations testing milk to determine milk producer payments shall be licensed for and maintain the Babcock method of milk fat analysis as a back-up procedure in the event of instrument malfunction or failure to meet the required standards. It will also be necessary to calibrate Milkotester and Infrared milk analyzers by the Babcock method fat analysis in the absence of approved commercially prepared reference milk samples.

(5) The material incorporated by reference in this administrative regulation is available for inspection during working hours at the Agri-

cultural Experiment Station offices in Lexington, Kentucky.

Section 7. All licensed milk testers testing dairymen's milk for payment shall carry out the following procedures to maintain their testers license:

(1) Prepare four (4) milk fat control samples in the fat range of two (2) to six (6) percent by approved chemical methods and use the samples each day the indirect instrument is used for fat analysis to pay producers. Payment on other milk components in addition to milk fat require daily control samples.

(2) Indirect instruments used for milk component analysis to pay dairymen shall be calibrated monthly, using UK Regulatory Services prescribed form, and submit a copy to UK Regulatory Services.

(3) Test nine (9) milk samples each month for milk fat analysis and ship the results and samples to the UK Regulatory Services laboratory in Lexington for fat analysis and comparisons.

(4) Submit a monthly milk fat testing schedule (days and hours) a month in advance to UK Regulatory Services unless your lab is open during normal working hours of 8 a.m. to 5 p.m. Monday through Friday.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 2001 at 10 a.m. Eastern Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: Chris Thompson, Milk Coordinator, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, College of Agriculture, Lexington, Kentucky 40546-0275, Phone (859) 257-2785, FAX (859) 323-9931.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Thompson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Not applicable

(b) The necessity of this administrative regulation: Not applicable

(c) How this administrative regulation conforms to the content of the authorizing statutes: Not applicable

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates previous testing procedures and requirements for licensed testers and establishes these requirements for licensed laboratories.

(b) The necessity of the amendment to this existing administrative regulation: This amendment establishes requirements for laboratories and testers to follow for proper testing of permitted producer's milk samples for pay purposes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with laboratory and tester requirements outlined in KRS 260.775 to 260.845 and 260.992.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to establish testing procedures for licensed laboratories and testers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: Type and number of entities affected: 60 testers, 20 handlers, and 20 laboratories.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have a minimal impact on licensees. Many laboratories and testers currently utilize most of these procedures. Some laboratories may need to develop written plans to meet the requirements of this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This amendment will result in little or no increase in cost to implement because most of the aforementioned persons and entities are currently licensed and monitored.

(b) On a continuing basis. There will be no additional cost associated with this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided for enforcement of this administrative regulation by KRS 260.845.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not result in a need for increased fees or funding for appropriate implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. Testing requirements are equally applicable to all handlers, laboratories, and testers.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)**

12 KAR 5:030. Test samples.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.785]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria and procedures for the physical handling and storage of milk samples that will be tested for payment purposes. [The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, milk testers and milk weighers and samplers. The purpose of this administrative regulation is to establish guidelines and approved procedures to insure accurate fresh milk samples for milk component testing.]

Section 1. Producers' milk samples to be tested for payment purposes shall at all times be under the care of, and only be physically handled by, a licensed sampler-weigher or a licensed tester.

(1) The license requirement for the physical handling of milk samples to be tested for payment purposes excludes the shipping of samples via a commercial carrier. In such cases, the samples shall be packaged, the shipping container sealed, and unpacked by licensed sampler-weighers or licensed testers; and

(2) Milk samples shall be physically handled, stored, and shipped in a manner to maintain their integrity. The sample shall be maintained in a temperature range of 0.5-4.4°C (33-40° F).

Section 2. Milk-receiving stations, laboratories, transfer stations, and processors shall provide adequate storage for milk samples.

(1) These locations shall provide a minimum storage capacity for samples typically representing three (3) days bulk-milk shipments; and

(2) Sample storage refrigerators shall be monitored daily with an accurate thermometer to ensure the proper temperature. The moni-

toring shall be documented with:

(a) A recording device; or

(b) A licensed sampler-weigher or licensed tester who shall keep a daily record that includes:

1. Date;

2. Time (including a.m. or p.m.);

3. Temperature; and

4. The sampler-weigher's or tester's initials. [Buyers of milk received from producers' farm bulk tanks with fresh samples taken during any twenty-four (24) hour period shall observe the following:

(1) Samples will be collected from every producers' shipment of milk and delivered to the buyer.

(2) Individual tank truck load samples shall be obtained whenever producer samples are used for milk fat tests.

(3) Samples shall be collected in a clean, dry, sanitized container. Four (4) ounces of milk shall be obtained with at least one (1) inch air space in top of a six (6) ounce container. A minimum of one (1) ounce shall be obtained in smaller containers. Samples shall be kept between thirty-three (33) degrees to forty (40) degrees Fahrenheit and in an upright position until they are tested for milk fat.

(4) Fresh milk samples shall be held for twenty-four (24) hours for retest following the last scheduled date for testing.

(5) Dairymen's milk samples used for payment shall be handled only by licensed samplers-weighers or licensed milk testers. Anyone handling these milk samples for shipping, picking up or transferring them in any manner shall attend a sampler-weigher training school for a sampler-weigher license or be a licensed tester.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 2001 at 10 a.m. Eastern Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: Chris Thompson, Milk Coordinator, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, College of Agriculture, Lexington, Kentucky 40546-0275, Phone (859) 257-2785, FAX (859) 323-9931.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Thompson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Not applicable

(b) The necessity of this administrative regulation: Not applicable

(c) How this administrative regulation conforms to the content of the authorizing statutes: Not applicable

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates procedures relating to the proper care of milk samples.

(b) The necessity of the amendment to this existing administrative regulation: This amendment establishes criteria and procedures for the physical handling and storage of milk samples that will be tested for payment purposes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to requirements outlined in KRS

260.775 to 260.845 and 260.992.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to establish procedures for sample handling to ensure the integrity of producers milk samples from the time the milk is sampled until it is analyzed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Type and number of entities affected: 400 sampler-weighers, 60 testers, 20 handlers, 20 laboratories, and 10 transfer stations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have a minimal impact on the aforementioned groups. Many of these individuals are currently implementing the procedures outlined in this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This amendment will result in little or no cost to implement because similar procedures are currently evaluated on a routine basis.

(b) On a continuing basis: There will be no additional cost on a continuing basis associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided for enforcement of this administrative regulation by KRS 260.845.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not result in a need for increased fees or funding for appropriate implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. Sample care and storage requirements are necessary for all milk samples that are to be analyzed for payment purposes.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)**

12 KAR 5:040. Sampling and weighing.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.785]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes procedures for milk sampler-weighers for accurately sampling and weighing milk in farm bulk tanks. [The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk weighers and samplers. The purpose of this administrative regulation is to establish procedures for milk weighers and samplers to use for accurate sampling and measuring of milk in farm bulk tanks.]

Section 1. Each bulk farm tank is required to be separately sampled and weighed. If a producer has multiple bulk farm tanks, samples and weights shall be obtained for each tank and the information recorded separately in the sampler-weigher's records.

Section 2. Sampler-weigher Equipment. A sampler-weigher shall use the following equipment in his sampling and weighing procedures:

(1) A sample case shall:

(a) Be rigidly constructed and insulated for safe transportation of the samples;

(b) Have ample space to hold samples;

(c) Maintain a refrigerant that is needed to cool and maintain the samples at a temperature range of 0.5-4.4° C (33-40° F);

(d) Contain a rack or float to keep the samples in an upright position and to keep the neck and the top of each sample container above the surface of the cooling medium; and

(e) Maintain a refrigerant at the level of the milk in the sample containers.

(2) Sample containers shall be clean, dry, and sterile. Sample vials shall have leak-proof caps and may be made of glass or molded, rigid plastic. Approved plastic bags may also be used. The sample containers shall hold a minimum of one (1) ounce of milk and provide sufficient air space for processing the sample in the laboratory;

(3) A sample dipper or other sampling device of sanitary construction. The sampling device shall be stored in a receptacle containing a sanitizing solution. Both the sampling device and the sanitizing solution shall be approved by the Milk Safety Branch of the Cabinet for Health Services;

(4) An accurate dial or digital thermometer;

(5) A waterproof, indelible marker to write information on sample containers;

(6) A watch to time the agitation of the milk in the bulk tank prior to sampling;

(7) An indelible pen to complete the necessary paperwork; and

(8) An adequate supply of bulk milk delivery tickets.

Section 3. Weighing Procedures. When measuring milk volume in farm bulk tanks with a gauge rod inside the tank or an external scale plate with gauge tube on the outside of the tank, the milk shall be motionless. A sampler-weigher shall:

(1) Use the following procedures for measuring milk with a gauge rod on the inside of a bulk tank:

(a) Remove any milk foam from the measurement area by pushing it aside with the rod;

(b) Remove any milk residue from the rod by wiping the rod with a clean, single-service towel. If the milk residue cannot be removed by this method, rinse the rod in warm (not hot) water and again wipe the rod with a single-service towel;

(c) Lower the gauge rod slowly straight down until it reaches a point approximately one-quarter (1/4) inch above its base. Hold the rod in this position for a moment and then ease it down until it seats firmly and naturally in its base;

(d) Raise the gauge rod and immediately read it in a well-lighted area at eye level;

(e) The gauge rod shall be read to the nearest graduation mark on the rod. If the reading is exactly half-way between two (2) graduation marks, read to the nearest even mark; and

(f) Repeat the gauge rod reading until two (2) readings are in agreement and record the reading.

(2) Use the following procedures for measuring milk with an external scale plate and gauge tube on the outside of a bulk milk tank:

(a) If milk is in the external scale plate's gauge tube, it shall be drained and refilled with cold milk. The tube shall be clean and dry prior to filling it with milk;

(b) To fill the gauge tube, open the outlet valve slowly to prevent foaming of milk as it fills the tube;

(c) After the milk from the bottom of the tank fills the tube, read the highest point of the center of the milk's meniscus as the measuring point to compare to the scale plate;

(d) The scale plate shall be read to the nearest graduation mark. If the reading is exactly half-way between two (2) graduation marks, read to the nearest even mark; and

(e) Repeat the scale plate and gauge tube reading until two (2) readings are in agreement and record the reading.

(3) Promptly convert the volume reading of the bulk milk tank to milk weight using the tank's conversion chart. The conversion should be repeated until two (2) conversions are in agreement. Record the milk weight.

(4) Procedures for weighing farm bulk milk in tanks that are not equipped with a gauge shall be approved by the director.

Section 4. Sampler-weigher Records. A sampler-weigher shall prepare and account for records pertaining to milk he samples and weighs.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(1) Sampler-weigher records shall include:

- (a) Bulk milk delivery tickets;
- (b) Producer barn charts;
- (c) Information recorded on sample containers; and
- (d) Any other record relating to bulk milk sampling and weighing activities.

(2) All records relating to sampler-weigher's daily activities shall be legible and written in indelible ink. Changes or corrections to records shall be made by drawing a single line through the entry and writing the correction nearby. Any changes or corrections shall be dated and initialed.

(3) Bulk milk delivery tickets shall accompany all loads of milk to milk-receiving stations, transfer stations, and processors and shall include the following information:

- (a) Identification of the handler;
- (b) Identification of the milk-receiving station, transfer station, or processor;
- (c) Date of collection;
- (d) Producer identification (and tank identification if the producer has multiple tanks);
- (e) Time of pickup (including a.m. or p.m.);
- (f) Temperature of the milk;
- (g) Milk volumetric reading;
- (h) Converted milk weight;
- (i) Any comments related to unusual circumstances; and
- (j) Sampler-weigher's signature.

(4) A sampler-weigher shall record the following information on producer barn charts for each tank sampled and weighed:

- (a) Date;
- (b) Time (including a.m. or p.m.);
- (c) Milk temperature;
- (d) Milk volumetric reading;
- (e) Converted milk weight; and
- (f) Sampler-weigher's signature or initials.

(5) If more than one (1) sampler-weigher samples and weighs producers' milk for one (1) truckload, each sampler-weigher shall sign the bulk milk delivery ticket, regardless of who delivers the load to the milk-receiving station, transfer station, or processor.

Section 5. Sampling Procedures. A sampler-weigher shall use the following procedures to obtain a representative sample from a producer's standard farm bulk tank:

(1) Each sample container shall be permanently marked with waterproof, indelible ink and shall be identified with the following information:

- (a) Producer identification (and tank identification if the producer has multiple tanks);
- (b) Date;
- (c) Time (including a.m. or p.m.);
- (d) Milk temperature; and
- (e) Sampler-weigher's initials.

(2) Milk in the bulk tank shall be agitated sufficiently to provide a homogenous blend and to obtain a representative sample. A minimum of five (5) minutes of agitation time is required for tanks with less than a 1000 gallon capacity. Tanks with a 1000 gallon capacity or larger shall be agitated a minimum of ten (10) minutes;

(3) To eliminate moisture and sanitizing solutions, the sampling device shall be rinsed with milk at least twice prior to taking samples;

(4) The milk shall be transferred from the sampling device to the sterile sample container away from the opening of the farm bulk tank. The container shall be filled to approximately three-fourths (3/4) full or to the container's "fill line." Enough air space shall be left in the container to allow the sample to be adequately mixed at the laboratory. After the milk has been transferred to the sample container, the container shall be tightly sealed and immediately placed in the sample case with appropriate refrigerant;

(5) At the time of sampling the first bulk milk tank on the sampler-weigher's route, an additional sample shall be collected for temperature determination. This sample's container shall be identified with the information outlined in subsection (1) of this section and with adequate information to identify the sample as the temperature control;

(6) Any additional or special samples obtained on the sampler-weigher's route shall be clearly and specifically identified with water-

proof, indelible markings stating the purpose of the sample; and

(7) Sampling procedures for nonstandard or sealed farm bulk milk tanks shall be approved by the director.

(8) Milk samples shall be under a sampler-weigher's immediate care at all times until the samples are delivered to the milk-receiving station, transfer station, or processor.

Section 6. Load Sample. A sampler-weigher shall obtain a load sample from the tank on his truck immediately after the last producer's milk is pumped into the truck's tank.

(1) The load sample shall be taken from the porthole at the top of the tank on the truck using a sanitized sampling device. Care shall be taken to prevent any foreign material from entering the porthole. The load-sample container shall be identified with the following information:

- (a) Adequate information to identify the sample as the load-sample;
- (b) Date;
- (c) Time (including a.m. or p.m.);
- (d) Sampler-weigher's initials; and
- (e) The milk truck's assigned tanker number.

(2) The load sample is to be used for comparisons of the load sample and individual producer's samples for the purpose of grading and evaluation of the sampler-weigher's competency in sampling; and

(3) The load sample is to be taken by all bulk sampler-weighers in addition to, not in lieu of, any other load samples required by the milk handler, transfer station, receiving station, or processor.

Section 7. Sample Set. A sample for each producer bulk milk tank, a temperature control sample, and a load sample shall accompany each load of milk to its final receiving station, transfer station, or processor. A sampler-weigher may need to obtain multiple samples for his bulk milk route to meet this requirement.

Section 8. Milk Sample Transfer Procedures. To expedite the transport of samples to the appropriate laboratory, a sampler-weigher shall follow these procedures:

(1) For bulk milk deliveries to locations where producers' milk samples are routinely transported from the receiving station, transfer station, or processor to the appropriate laboratory, a sampler-weigher shall properly place his samples in the location's sample storage refrigerator or refrigerated sample storage case after the bulk load of milk has been determined to be acceptable; or

(2) For bulk delivery when producer's milk samples are not routinely transported from the receiving station, transfer station, or processor to the appropriate laboratory, a sampler-weigher shall follow written sample transfer procedures established by the licensed handler(s) who issues payments to producers on the sampler-weigher's route(s). Written sample transfer procedures shall be approved by the director. [Each pickup of milk is required to be sampled and weighed (measured). Upon arrival at the farm the milk in the bulk tank may be measured at once if the agitator is not running. If the agitator is running, a sample may be obtained for milk fat testing first, after at least five (5) minutes of agitation. Measurement of milk can only be made after the milk surface in the farm tank becomes motionless.]

Section 2. Bulk milk weighers and samplers shall use the following equipment in their milk sampling procedures:

(1) Sample rack and compartment on truck to hold one (1) sample for fat test for each patron, load samples, and other required samples.

(2) Need-refrigerant to contain temperature of samples between thirty-three degrees (33°) and forty degrees (40°) Fahrenheit.

(3) Sample bags, tubes, bottles or vials thoroughly clean, dry-leak-proof container holding at least one (1) to four (4) ounces of milk plus one (1) inch air space.

(4) Sample dipper or other sampling devices of sanitary construction approved by the Cabinet for Human Resources. Shall hold one-fourth (1/4) of the required sample.

Section 3. Bulk milk weighers and samplers shall use the following procedures in measuring farm bulk milk:

(1) Any foam in the area of measurement shall be gently moved to one (1) side with the measuring rod.

(2) The measuring rod shall be clean, dry and free of fat before

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

taking a reading. Rinse the measuring rod in clean warm (not hot) water and dry with a single service paper towel. Insert rod into the milk slowly and seat it firmly without pounding.

(3) Read the rod to the nearest graduation mark and the correct weight recorded as indicated on the conversion chart. A second check reading is required. It's a good practice to record both the dip stick reading and the weight from the conversion chart on the farm weight ticket.

(4) Any unusual condition, such as the tank not level, agitator out, etc. shall be recorded on the weight ticket and should be reported to the buyer.

Section 4. Bulk milk weighers and samplers shall use the following procedures in sampling producers' farm bulk milk:

(1) Milk shall be agitated sufficiently to obtain a homogeneous blend. A minimum of five (5) minutes of agitation is required to obtain a representative sample for milkfat testing out of farm tanks less than 1,000 gallon capacity. Farm tanks over 1,000 gallon capacity shall be agitated at least ten (10) minutes.

(2) To eliminate moisture and sanitizing solution, rinse dipper and/or other sampling devices at least twice with milk before taking samples.

(3) The bulk milk tank agitator shall be turned on when pumping starts and immediately turned off when the level of milk reaches the top of the agitator. Do not start pumping the milk on to truck until sampling is completed. Take a total of four (4) ounces of milk if a six (6) ounce sample bag is used and at least one (1) ounce if a two (2) ounce container is used for producer samples.

(4) Each sample tube, bottle, vial, or plastic bag must be plainly, permanently labeled with identity of the producer and the date the sample was taken.

Section 5. Weight records are required to be made and accounted for in accordance with either subsections (1), (2) or (3) of this section:

(1) A separate record or ticket shall be made for each "pickup" (may be duplicated). This ticket must show the amount of milk in pounds, the date, and the signature of the person who measured and sampled the milk. These tickets must be taken to the plant with the milk they represent by the person who signed them and delivered by him to the person designated to receive them.

(2) A record of the amount of milk obtained at each "pickup" shall be left at the farm; this record shall be made in ink, indelible pencil, or by a permanent duplicating process, properly dated and authenticated.

(3) If the weight record form is unsuitable for a signature being entered after each recorded amount of milk, the person who measures and samples it shall sign a certificate at the plant to cover the weight records for each load of milk. In this certificate he shall certify that he personally measured and sampled all of the milk in the load delivered on the said date. In addition, he shall date and sign the weight record at the end of the pay period.

(4) The licensed milk sampler and weigher that samples each farm bulk tank and obtains a truck load sample after the last pickup shall sign the weight ticket regardless of who delivers the truck load of milk to the milk buyers.

(5) Milk samples shall be under the hauler's immediate surveillance at all times until they are delivered to the buyer, except as provided in Section 5(3) of this administrative regulation.

Section 6. All licensed weighers and samplers transporting farm bulk milk in bulk tank trucks shall be required to obtain a "load sample" from the tank on their truck immediately after the last producers milk is pumped into their truck tank.

(1) The load sample shall be taken with a sanitized dipper from the porthole on top of tank on the truck. Care shall be taken to prevent any foreign material from entering the porthole which could contaminate the milk when the load sample is taken.

(2) This load sample is to be used for comparison of load and individual producers' samples for the purpose of grading and evaluation of the hauler's competency in sampling.

(3) This load sample is to be taken by all bulk haulers in addition to, not in lieu of, any other load samples required by the buyer of the milk.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 2001 at 10 a.m. Eastern Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: Chris Thompson, Milk Coordinator, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, College of Agriculture, Lexington, Kentucky 40546-0275, Phone (859) 257-2785, FAX (859) 323-9931.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Thompson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Not applicable

(b) The necessity of this administrative regulation: Not applicable

(c) How this administrative regulation conforms to the content of the authorizing statutes: Not applicable

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates criteria relating to proper sampler-weigher procedures.

(b) The necessity of the amendment to this existing administrative regulation: This amendment establishes procedures for sampler-weighers to ensure that raw farm milk can be fairly and accurately marketed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to sampling and weighing requirements outlined in KRS 260.775 to 260.845 and 260.992.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to establish sampling and weighing procedures for licensed sampler-weighers defined in KRS 260.775.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Type and number of entities affected: 400 sampler-weighers, 20 handlers, and 10 transfer stations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have minimal impact on the aforementioned groups. Many of these individuals are currently implementing the procedures outlined in this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This amendment will result in little or no increase in cost to implement because most of the aforementioned persons and entities are currently implementing these procedures.

(b) On a continuing basis: There will be no additional cost associated with this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided for enforcement of this administrative regulation by KRS 260.845.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if

new, or by the change if it is an amendment: This amendment will not result in a need for increased fees or funding for appropriate implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. Sampling and weighing procedural requirements are necessary for all farm bulk milk that is sampled and weighed for payment purposes.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)**

12 KAR 5:050. Inspections.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260.825]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes a basis for monitoring licensed milk handlers, laboratories, transfer stations, sampler-weighers, and testers to ensure that if these licensees are in compliance with KRS 260.775 to 260.845. [The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers, testers, and weighers and samplers.]

Section 1. A milk handler, laboratory, and transfer station shall be inspected and evaluated for compliance with KRS 260.775 to 260.845. The director shall provide written notice to the appropriate licensee to correct any observed discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 to 260.845 and 260.992.

Section 2. A sampler-weigher shall be inspected and evaluated for compliance with KRS 260.775 to 260.845.

(1) A sampler-weigher's records, equipment, samples, and procedures shall be examined to determine compliance.

(2) Milk samples obtained by a sampler-weigher may be collected and analyzed by the director to assist in the evaluation of the sampler-weigher's activities.

(a) Results of these analyses may be used to make comparisons among and between these samples. These comparisons may include the use of milk-component test results and other test results pertaining to milk quality and composition.

(b) Results of these analyses may be used to determine the amount of milkfat on a load of bulk milk as represented by the individual producer's bulk-tank samples and weights and as represented by the load sample and the sum of individual producers' bulk-tank weights. The deviation of the milkfat on the bulk milk load between these two (2) comparisons may, in part, determine the evaluation of the sampler-weigher.

(c) The deviation between the weight of the load of bulk milk represented by the sum of the individual producer's bulk-tank weights and the weight of the load of bulk milk as determined by an accurate scale or meter may, in part, determine the evaluation of the sampler-weigher. The scale or meter used in this determination shall be well maintained and approved by an accredited scale maintenance firm or appropriate government agency.

(3) An evaluation of an inspection of a sampler-weigher shall be awarded a grade. Grades given shall be A - excellent; B - good; C - poor; D - unsatisfactory. Criteria for awarding grades shall be established by the director and shall be printed on the inspection report. Noncompliance with KRS 260.775 to 260.845 and 12 KAR Chapter 5 may result in a D grade inspection.

(4) A sampler-weigher who receives three (3) D grade inspections within a twelve (12) month period shall be required to attend the next scheduled one (1) day sampler-weigher training school and take a written examination administered by the director. This shall not pre-

vent the director from taking other actions under KRS 260.775 to 260.845, and 260.992 for a sampler-weigher who receives a D grade inspection or who otherwise is not in compliance with KRS 260.775 to 260.845 and 260.992.

Section 3. A tester shall be inspected and evaluated for compliance with KRS 260.775 to 260.845.

(1) A tester's records, equipment, and procedures shall be examined, in part, to determine compliance.

(2) The results of a tester's analyses may be compared to results of the director's analyses. The deviation between these results shall, in part, determine compliance. The director shall provide written notice to the tester and to the licensed laboratory employing the tester to correct any discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 to 260.845 and 260.992. [For the purpose of enforcement of KRS 260.775 to 260.992, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions; officers or employees duly designated by the director, upon presenting appropriate credentials, are authorized to enter, during normal business hours, any place where milk is being sold, or handled from Kentucky producers, to inspect records pertaining to the purchase and payment of milk, to obtain samples, data and records pertaining to weighing and sampling and testing of producers milk for pay purposes which is necessary to administer the law.]

Section 2. (1) Testers and samplers and weighers shall be inspected and graded on the accuracy of their operations and on their compliance with requirements of the law and administrative regulations under the law for which they are responsible. Criteria for awarding grades shall be established annually by the Examining Board; distributed to all licensees and applicants and printed on the inspection report. Grades given will be: A - Excellent; B - Good to Fair; C - Poor (probation); D - Unsatisfactory.

(2) Milk weigher and samplers receiving three (3) D grades in one (1) year will be required to attend the haulers formal training school even though they may have previously attended. D grades may be given for improper temperature of sample storage, missed producer or load samples, poor inspections and other violations of the law. Continued poor performance of the weigher sampler can result in his being called before the Creamery License Board for a hearing.

(3) Milk fat testers receiving two (2) unsatisfactory grades (C and D) in one (1) year may be put on probation and if unsatisfactory performance continues the tester may be called before the Creamery License Board to discuss why their license should not be suspended or revoked. Unsatisfactory grades may be given for poor inspection grades, substandard equipment, improper calibrations of equipment, fraudulent tests and other violations of the law.

Section 3. Buyers shall be inspected and rated on items for which they are responsible. Notice shall be given to correct any discrepancies. Unsatisfactory compliance and violations shall be handled in accordance with provisions of the law.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 2001 at 10 a.m. Eastern Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: Chris Thompson, Milk Coordinator, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, College of Agriculture, Lexington, Kentucky 40546-0275, Phone (859) 257-2785, FAX (859) 323-9931.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Thompson

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: Not applicable
 - (b) The necessity of this administrative regulation: Not applicable
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: Not applicable
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment updates previous inspection procedures for licensed individuals and entities.
 - (b) The necessity of the amendment to this existing administrative regulation: This amendment establishes procedures to evaluate licensed milk handlers, laboratories, transfer stations, testers, and sampler-weighers.
 - (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to requirements outlined in KRS 260.775 to 260.845 and 260.992.
 - (d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to establish adequate evaluation of licensees' procedures to ensure that raw farm milk is fairly and accurately marketed.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Type and number of entities affected: 400 sampler-weighers, 60 testers, 20 handlers, 20 laboratories, and 10 transfer stations.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have a minimal impact on licensees. Many of the aforementioned individuals and entities are currently licensed and routinely evaluated.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: This amendment will result in little or no increase in cost to implement because most of the aforementioned persons and entities are currently inspected on a routine basis.
 - (b) On a continuing basis. There will be no additional cost associated with this amendment on a continuing basis.
 - (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided for enforcement of this administrative regulation by KRS 260.845.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not result in a need for increased fees or funding for appropriate implementation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. Inspection and evaluation requirements are equally applicable to all milk sampler-weighers, testers, handlers, laboratories, and transfer stations.

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)

12 KAR 5:060. Purchases from farm bulk tanks.

RELATES TO: KRS 260.775 to 260.845, 260.992
STATUTORY AUTHORITY: KRS 260.825(1) [260-780]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria for recordkeeping and reporting practices to ensure that bulk farm milk is fairly and accurately marketed. (The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers. The function of this administrative regulation is to set up aids and safeguards to insure compliance with the law which states that buyers shall purchase milk from farm bulk tanks that is measured and sampled by licensed samplers and weighers only.)

Section 1. A licensed milk handler or licensed transfer station shall review bulk milk delivery tickets to ensure compliance with KRS 260.775 to 260.845.

(1) A bulk-milk delivery ticket representing a load of milk for a permitted Kentucky producer shall be examined to ensure that a licensed sampler-weigher sampled and weighed the milk.

(2) A bulk-milk delivery ticket representing a shipment of milk from a producer shall be examined for compliance with 12 KAR 5:040, Section 4(3).

(3) Discrepancies shall be reported to the director.

Section 2. Personnel at a licensed laboratory who test permitted producers' samples for pay purposes shall review the information recorded on sample containers to ensure compliance with 12 KAR 5:040, Section 5(1). A responsible person at the laboratory shall report discrepancies to the director.

Section 3. Licensed Milk Handler Reporting Requirements. (1) Each licensed milk handler shall submit to the director an accurately-completed Kentucky Farm Milk Handlers Report each quarter with payment of inspection fee as required by KRS 260.821. The Kentucky Farm Milk Handlers Report form shall be provided to handlers by the director.

(2) Each licensed milk handler who issues payments to permitted producers shall submit to the director a current list of these permitted producers to whom payments are being issued. The list shall be submitted with the handler's annual license application and shall be updated when the handler submits its quarterly Kentucky Farm Milk Handlers Report. The listing shall include the following information about each permitted producer:

(a) Name;

(b) Permit number issued by the Milk Safety Branch of the Kentucky Cabinet for Health Services;

(c) Identification number issued by the handler if different from permit number; and

(d) Mailing address and street address if different from mailing address.

Section 4. A licensed milk handler who issues payments to permitted producers shall submit to the director, upon request, a copy of each permitted producer's bulk-tank conversion chart(s) to whom they issue payments. These charts may be reviewed by the director to determine if a permitted producer's bulk milk has been accurately weighed by sampler-weighers.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference: "Kentucky Farm Milk Handlers Report", October 2000, Division of Regulatory Services.

(2) This material may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [Buyers who purchase milk held in farm bulk tanks shall keep a sampler and weighers license record file on all samplers and weighers who sample and measure milk in farm bulk tanks purchased by said buyer. This file shall show for each such person: his name; address, signature, description and the status of his license or permit to sample and weigh.

Section 2. Milk buyers shall check weigh tickets or records and

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

certificates daily to insure that they are in accordance with the creamery license law and administrative regulations.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 2001 at 10 a.m. Eastern Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: Chris Thompson, Milk Coordinator, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, College of Agriculture, Lexington, Kentucky 40546-0275, Phone (859) 257-2785, FAX (859) 323-9931.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Thompson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Not applicable

(b) The necessity of this administrative regulation: Not applicable

(c) How this administrative regulation conforms to the content of the authorizing statutes: Not applicable

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates previous procedures and requirements for handlers and transfer stations who receive or procure farm bulk milk.

(b) The necessity of the amendment to this existing administrative regulation: This amendment establishes a criteria for record keeping and reporting practices to ensure that farm bulk milk is fairly and accurately marketed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to requirements outlined in KRS 260.775 to 260.845 and 260.992.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to establish record keeping and reporting procedures for licensed milk handlers, laboratories, and transfer stations..

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Type and number of entities affected: 400 sampler-weighers, 60 testers, 20 handlers, 20 laboratories, and 10 transfer stations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have a minimal impact on licensees. Handlers have been notified in advance of new reporting requirements to provide them adequate preparation time.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This amendment will result in little or no increase in cost to implement because most of the aforementioned persons and entities are currently reporting similar information. This amendment will require some reallocation of time to work with licensees to achieve transition.

(b) On a continuing basis. There will be no additional cost associ-

ated with this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided for enforcement of this administrative regulation by KRS 260.845.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not result in a need for increased fees or funding for appropriate implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. Record keeping and reporting requirements are equally applicable to all milk handlers, laboratories, and transfer stations.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 5:070. Uniform standards for payment.

RELATES TO: KRS 260.775 to 260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1) [260-780]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria for uniform standards of payment for producer milk. (The Director of the Agricultural Experiment Station, University of Kentucky, is charged with the enforcement of KRS Chapter 260 to regulate milk buyers. The functions of this administrative regulation is to provide uniform standards in the payment of producer milk based on milk component tests, for fresh samples, special samples and tests and required records of tests.)

Section 1. Number of Samples Required for Milk Component Testing for Pay Purposes. (1) Grade A milk producers shall be paid based on calculations of component tests from a minimum of five (5) bulk tank samples representative of and fairly evenly spaced throughout the monthly pay period.

(2) Manufacturing grade milk producers shall be paid based on calculations from a minimum of three (3) bulk tank samples representative of and fairly evenly spaced throughout the fifteen (15) day pay period.

(3) Payment calculations for producers with multiple farm bulk tanks shall be made for each tank separately or shall include a weighted-average computation. A daily weighted average shall be based on a test from a sample representing each farm bulk tank and a recorded weight for each farm bulk tank.

Section 2. Pay Records. (1) Written records shall be recorded legibly in ink and include the following information:

(a) Each page shall be signed and dated by a responsible person; and

(b) Changes or corrections to records shall be made by drawing a single line through the entry and writing the corrected entry nearby. Any changes or corrections shall be dated and initialed.

(2) Persons who use electronic systems to create, modify, maintain, or transmit records relating to milk samples, weights, tests, or payments shall employ procedures and controls designed to ensure the authenticity and integrity of the records. Such procedures and controls shall include the following:

(a) The ability to generate accurate and complete copies of records in printed and electronic form which are suitable for inspection, review, and copying by the director;

(b) Protection of records to enable their accurate and ready retrieval throughout the retention period of the records;

(c) Limiting electronic record access only to authorized individuals;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(d) Determination that persons who develop, maintain, or use electronic systems have the training and qualifications to perform assigned tasks; and

(e) The establishment of and adherence to written policies to deter record falsification. The policies shall hold a person responsible for his tasks relating to electronic records.

(3) The consolidated pay records shall be compiled from the sampler-weigher's weight records, valid laboratory test records, and other factors affecting the price. All records relating to payments shall be properly documented and retained for a two (2) year period.

(4) A statement that agrees with the pay record shall be provided to each permitted producer with the final payment for each month. The statement shall include the following:

(a) Dates covered by payment;

(b) Amount of milk paid for;

(c) Detailed pricing description;

(d) Test result(s) and component yield(s) used to calculate payment; and

(e) Any deductions. [(1) Special samples are those samples taken in emergencies to replace churned, spilled, soured or other regular samples determined as "wild." Two (2) or more of these daily samples shall be taken and tested; the samples may be composited or the results averaged. Results of tests on special samples are designated as special tests.

(2) A "wild" fat test for fresh samples is defined as one testing 0.50 percent above or below the patron's last average pay test and determined to not be watered.

(3) When a plant obtains a "wild" milk fat test it may be discarded and tests obtained from the next two (2) milk deliveries used in its place.

Section 2. Age and Number of Samples Used for Pay Purposes:

(1) Fresh milk samples are samples not over twenty-four (24) hours old when received by the buyer.

(2) Manufacturing milk. Use the average of three (3) fresh milk samples for each producer per fifteen (15) day pay period as equally distributed over the pay period as possible.

(3) Grade A milk. Use samples from at least five (5) days production for each producer taken fairly evenly dispersed throughout the pay period.

(4) Fresh milk samples shall be tested preferably on the day sampled but within seventy-two (72) hours from the time of procurement; otherwise they must be preserved.

Section 3. Records of tests to be used as a basis for pay designated in these administrative regulations as legal test records shall consist of:

(1) Records of tests made on fresh samples;

(2) Records of retests and special tests:

Section 4. (1) The requirements for legal test records shall be:

(a) All legal test records shall be original, that is recorded as they are read;

(b) All legal test records shall be recorded in ink or indelible pencil and each separate sheet dated and signed by a licensed tester;

(c) Changes or corrections to any legal test records shall be made by drawing a line through the incorrect test and entering the correct test and tester's initials nearby. (Erasures and write-overs are forbidden.)

(d) Records of retests and special tests shall be made on record sheets other than the regular (original) test record sheets.

(e) All legal test records shall be kept on file for twelve (12) months.

(2) Each licensed tester shall be responsible for the accuracy of the tests he makes and the accuracy and completeness of the records of these tests. Anything done or left undone to the test records to cause their authenticity to be questionable and therefore illegal is contrary to this administrative regulation.

Section 5. (1) The consolidated pay records are required to be made in a clear, permanent manner, properly arranged and identified. This consolidated record shall be accurately compiled from the original weight records, legal test records, base price used and other factors

affecting the price. A statement shall be supplied each producer with payment for each pay period. The pay record and statement are required to agree and both are required to show: dates covered by payment, amount of milk received and paid for, the average butterfat test of this milk, the price per hundredweight paid, the gross value, deductions if any, and amount paid. Records including original weight records, pay records, test records, and evidence of payment having been made, shall be kept on file for twelve (12) months.

(2) All tests used as basis for pay shall be taken from and agree with the "legal test records" as described and specified above. It is illegal to "make up" tests, to raise or lower tests, to manipulate tests or records or to use any test not documented by proper records.]

C. ORAN LITTLE, Dean and Director

APPROVED BY AGENCY: November 15, 2000

FILED WITH LRC: November 16, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 2001 at 10 a.m. Eastern Time, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: Chris Thompson, Milk Coordinator, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, College of Agriculture, Lexington, Kentucky 40546-0275, Phone (859) 257-2785, FAX (859) 323-9931.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Thompson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Not applicable

(b) The necessity of this administrative regulation: Not applicable

(c) How this administrative regulation conforms to the content of the authorizing statutes: Not applicable

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates previous criteria for issuing payments to producers for farm bulk milk.

(b) The necessity of the amendment to this existing administrative regulation: This amendment establishes minimal requirements for uniformity in producer payments for bulk farm milk.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to requirements outlined in KRS 260.775 to 260.845 and 260.992.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to establish uniform payment procedures for licensed handlers defined in KRS 260.775.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Type and number of entities affected: 60 testers, 20 handlers, and 20 laboratories.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will have a minimal impact on licensees.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This amendment will result in little or no increase in cost to implement because most of the aforementioned persons and

entities currently utilize similar procedures required by this administrative regulation.

(b) On a continuing basis. There will be no additional cost associated with this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is provided for enforcement of this administrative regulation by KRS 260.845.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not result in a need for increased fees or funding for appropriate implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. Uniform payment requirements are equally applicable to all entities that issue payments to producers for bulk farm milk.

KENTUCKY RETIREMENT SYSTEMS (Amendment)

105 KAR 1:160. Sick leave plans.

RELATES TO: KRS 61.546, 78.616 [16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852]

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.546 provides for retirement service credit for unused sick leave of members of the Kentucky Employees Retirement Systems and the State Police Retirement System. KRS 78.616 provides for retirement service credit for unused sick leave for members of the County Employees Retirement System. This administrative regulation provides the requirements for participation in the program by individual county agencies, the calculation of the service credit and the payment of the cost of the credit by the employer. This administrative regulation also sets out the formula for prorating sick leave when it is earned by a member partly under SPRS, partly under KRS hazardous duty coverage and partly under the Kentucky Employees Retirement System nonhazardous coverage.

Section 1. Definitions. (1) "Alternate plan" means the sick leave program described in KRS 78.616(5).

(2) "Standard plan" means the sick leave program as described in KRS 61.546 or 78.616(1), (3) and (4).

Section 2. An agency participating in the County Employees Retirement System may provide a sick leave program under KRS 78.616 by adopting an order appropriate to the agency [and by completing and filing the form for the sick leave program provided by the retirement system].

(1) Only one (1) sick leave program under KRS 78.616 shall be offered to the employees of an agency.

(2) The agency shall certify to the retirement system that the program shall be universally administered.

(3) The agency shall pay all costs of the program.

(4) The agency shall certify to the retirement system the number of hours that constitutes a regular working day for employees of the agency.

(5)(a) If an agency participating in the County Employees Retirement System [if the agency] has no retirement sick leave program, it may choose the standard plan or it may choose the alternate plan.

1. An agency adopting the standard plan may elect:

a. To purchase credit only for the first six (6) months of accumulated sick leave;

b. To purchase credit for the first six (6) months and to pay fifty (50) percent of the cost for service above six (6) months; or

c. To purchase credit for all accumulated sick leave.

2. An agency which elects to pay only for the first six (6) months of accumulated sick leave may at a later date elect to pay fifty (50) per-

cent or all of the cost of service above six (6) months. An agency which elects to pay for the first six (6) months and fifty (50) percent of the cost for service above six (6) months, may at a later date elect to pay for all accumulated sick leave.

3. If the agency adopted the standard plan prior to July 1988, it may choose to adopt the alternate plan.

(b) Agencies participating in the Kentucky Employees Retirement System or the State Police Retirement System shall provide sick leave credit for all accumulated sick leave.

(c) Once a sick leave program is adopted, the agency shall continue to offer a sick leave program to its employees.

Section 3. If the agency adopts the standard plan, upon a member's retirement:

(1) The agency participating in the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System shall certify the unused sick leave credit which the member has accumulated on the Sick Leave Authorization, Form 6500 [24, dated April 1984].

(2)(a) The retirement system shall determine the number of days of credit and divide the number of days by twenty-one (21) which shall be the average number of working days in a month. If the remainder is equal to or greater than eleven (11), the member shall receive credit for an additional month.

(b) For agencies participating in the County Employees Retirement System, the cost of the credit, determined by the formula described in KRS 61.552(9), [for up to six (6) months of service] shall be paid by the agency within thirty (30) days of notification by the retirement system.

(3)(a) If the total accumulated sick leave is greater than six (6) months and the agency does not pay for service greater than six (6) months, the member may purchase some or all of the additional months by paying the cost, determined by the formula described in KRS 61.552(9), to the retirement system before his retirement date.

(b) If the total accumulated sick leave is greater than six (6) months and the agency pays fifty (50) percent of the cost of the additional months, the employee shall receive credit for the additional months if the employee pays the cost determined by the formula described in KRS 61.552(9), to the retirement system before his retirement date.

Section 4. Agencies adopting the alternate plan, shall also certify the maximum number of sick leave days that an employee may accumulate prior to termination. [Upon a member's termination:]

(1) The agency shall compensate the member for all accumulated sick leave up to the maximum allowed upon termination. If the member is a classified employee of a school board, the agency shall compensate the member for accumulated sick leave upon the member's retirement. The rate of compensation for each day shall be based on the member's current rate of pay.

(2) Each month, the agency shall withhold employer and employee contributions from the sick leave compensation of all employees who terminate and shall remit the contributions along with the Form 6501 [24-A, alternate sick leave certification dated August 1992;] for each employee. The forms and contributions deducted during the month shall be sent to the retirement office within ten (10) days following the end of the month. The contributions and compensation shall not be reported with the regular payroll.

(3) If the member has one (1) or more months of service credit as determined in Section 3 of this administrative regulation, the service shall be added to the member's total service credit.

(4) Compensation and service shall also be included in the member's final compensation as follows:

(a) The member's sick leave credit in months and the compensation for those months shall be included in the [last] fiscal year with the highest average monthly salary used in his final compensation until the service credit in the fiscal year has reached twelve (12) months.

(b) When service credit in the [last] fiscal year with the highest average monthly salary has reached twelve (12) months, the remaining months of service and compensation shall be included in the [first] fiscal year with the lowest average monthly salary used in his final compensation until service credit in the fiscal year has reached twelve (12) months.

(c) When service credit in [both] the two (2) [last-and-first] fiscal years with the highest and lowest average monthly salary used in his final compensation have reached twelve (12) months, the remaining months and compensation shall be used in lieu of the member's service and salary in the [first] fiscal year with the lowest average monthly salary of the members final compensation. The salary replaced shall be the monthly average of the member's actual salary in the fiscal year.

Section 5. An employee who has service credit in the Kentucky Employees Retirement System as hazardous and nonhazardous or who has service credit in both the Kentucky Employees Retirement System and the State Police Retirement System shall have his accumulated sick leave prorated between the systems and between the hazardous and nonhazardous accounts based on the ratio of his service in each account, including purchased service, and to his total service credit.

Section 6. Incorporation by Reference. (1) The following forms [required by this administrative regulation] are incorporated by reference:

(a) Form 6500, Sick Leave Authorization (rev. 11/00); and

(b) Form 6501, Alternate Sick Leave Authorization (rev. 11/00).

(2) These materials [and] may be inspected, copied, or obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: November 16, 2000

FILED WITH LRC: December 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William P. Hanes, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-4646, fax (502) 564-5656.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: William P. Hanes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for employers participating in the County Employees Retirement System to participate in the sick leave programs created by KRS 78.616, as well as the formulas used to determine the amount of sick leave credit given to retiring members.

(b) The necessity of this administrative regulation: This regulation is necessary to administer sick leave credit pursuant to KRS 61.546 and 78.616.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.546 and 78.616 provide for members to receive credit for unused sick leave balances upon retirement. This administrative regulation establishes the formula for converting sick leave balances to months and the method for adding payments for sick leave into the member's final compensation under the alternate sick leave plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear methods for determining retirement service credit for unused sick leave.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment sets out additional sick leave options for County Employees Retirement System employers provided in KRS 78.616 and establishes a method for prorating sick leave credit where a state employee has service in both hazardous and nonhazardous positions.

(b) The necessity of the amendment to this administrative regulation: The additional sick leave options for employers were authorized by KRS 78.616. The proration of sick leave for state employees is necessary because the employee may earn sick leave through out his career, but it transfers with him when he changes positions and will be reported by his most recent employer. In order to give the employee sick leave credit as both hazardous and nonhazardous at the time of retirement for sick leave, the sick leave credit must be prorated in the calculation of retirement benefits.

(c) How the amendment conforms to the content of the authorizing statutes: The additional sick leave options for employers were authorized by KRS 78.616. When a state employee transfers between agencies, his sick leave balance transfers with him. Sick leave earned in a hazardous position may have a higher value for retirement purposes than sick leave in a nonhazardous position. It is not possible to determine how much sick leave was earned or used from a job. The formula for prorating sick leave gives the employee sick leave credit under both hazardous and nonhazardous positions based on his service, so that the employee will receive sick leave credit under both hazardous and nonhazardous benefits, rather than being given credit only under his last position.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide a clear formula for prorating sick leave.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects approximately 2,000 to 3,000 employees who have sick leave earned in hazardous and nonhazardous positions in the Kentucky Employees Retirement System and the State Police Retirement System.

(4) Provide an assessment of how the above group or groups will be impacted either by the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment clarifies the proration of sick leave between period of hazardous and nonhazardous service.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to this administrative regulation.

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative expenses of the Kentucky Retirement Systems are paid from the retirement allowance account and funded through employer contributions.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are required by this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are required by this amendment.

(9) TIERING: Is tiering applied? Tiering was applied. The formula for prorating sick leave distributes the retirement credit for unused sick leave fairly over the employee's career.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation establishes the procedures for a local government agency participating in the County Employees Retirement System to adopt a sick leave program and, if it already has a sick leave program, to adopt an enhanced

sick leave program.

3. State the aspect or service of local government this administrative regulation will affect. Providing sick leave credit at the time of retirement can provide an additional benefit which would be useful in recruitment and retention of employees.

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 are no costs associated with this administrative regulation.

**JUSTICE CABINET
Department of Corrections
Division of Local Facilities
(Amendment)**

501 KAR 3:130. Inmate programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 13A.350, 441.055, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures for inmate programs and services.

Section 1. Work Programs. (1) Written policy and procedure shall provide that inmate programs and services are available and include but are not limited to social services, religious services, recreation and leisure time activities and library services.

(2) Sentenced inmates who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by proper authority.

(3) Written policy and procedure shall provide that unsentenced inmates are not required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure which encourage the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of such programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) State inmates shall be provided the opportunity to attend adult basic education programs and pursue a GED.

Section 3. Library Services. Where resources are available in the community, library services may be made available to all inmates.

Section 4. Religious Programs. Written policy and procedure shall ensure the constitutional rights of inmates to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the jail.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all inmates with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week when weather permits. Inmates who pose a threat to the safety and security of the jail may be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit inmates to participate in, but not be limited to, such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

Section 6. Programs for State Inmates. (1) OJT work programs. State inmates shall be provided the opportunity to participate in OJT work programs in accordance with KRS 441.125. State inmates who

have an approved custody level may be allowed to work on community service projects outside the jail when authorized by the jailer.

(2) Substance abuse programs. State inmates shall be provided the opportunity to participate in substance abuse programs including AA or NA. State inmates who have been determined to have substance abuse problems shall be referred to outpatient treatment, which is available in the community. State inmates, who are in need of extensive substance abuse treatment and have been referred by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), when space is available.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures to be followed for inmate programs and services in county jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of programs and services offered to inmates incarcerated in county jails.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing to an inmate the opportunity to participate in programs and take advantage of services offered to inmates incarcerated in county jails.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments will comply with KRS Chapter 13A and provide the opportunity for inmates in county jails to attend adult basic programs and pursue a GED.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of jails.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will help jails to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 67 county jails which house state prisoners.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To provide clear and concise direction and information in the implementation of programs and services.

(5) Provide an estimate of how much it will cost to implement this

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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. County jails.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: None

JUSTICE CABINET Kentucky Department of Corrections (Amendment)

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

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference: "Department of Corrections Secured Policies and Procedures, December [September] 13, 2000."

| | |
|--------------|---|
| BCC 09-01-01 | Inclement Weather/Emergency Condition Operation |
| BCC 09-02-01 | Restricted Areas |
| BCC 09-02-02 | Inmate Pass System to Restricted Areas |
| BCC 09-02-03 | Regulation of Inmate Movement |
| BCC 09-04-01 | Construction Crew Entry, Exit and Regulations |
| BCC 09-04-02 | Complex Entry and Exit |
| BCC 09-05-01 | Key Control |
| BCC 09-06-02 | Transportation to Courts |
| BCC 09-07-01 | Drug Abuse and Intoxicants Testing |

| | |
|----------------|---|
| BCC 09-09-01 | Population Counts and Count Documentation |
| BCC 09-15-01 | Search Policy and Disposition of Contraband |
| BCC 09-16-01 | Security Activity Logs |
| BCC 09-17-01 | Institutional Supervisor Inspections |
| BCC 09-20-01 | Inmate Death |
| BCC 09-21-01 | Tool Control |
| BCC 09-22-01 | Emergency Communication System |
| CPP 8.3 | Emergency Planning |
| CPP 8.4 | Emergency Preparedness |
| CPP 8.5 | Emergency Squads |
| CPP 9.1 | Use of Force |
| CPP 9.3 | Security Threat Groups |
| CPP 9.7 | Storage, Issue and Use of Weapons Including Chemical Agents |
| CPP 9.9 | Transportation of Inmates |
| CPP 9.10 | Security Inspections |
| CPP 9.11 | Tool Control |
| FCDC 09-01-02 | Institutional Entry and Exit Surveillance and Perimeter Security Procedures |
| FCDC 09-03-01 | Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials |
| GRCC 08-03-01 | Escape Plan (Amended 12/13/00) |
| GRCC 08-05-01 | Emergency Squad: Selection, Training and Evaluation (Amended 12/13/00) |
| [GRCC 08-06-01 | Response Units (Deleted 12/13/00)] |
| GRCC 08-07-01 | Natural Disaster or Earthquake (Amended 12/13/00) |
| GRCC 09-03-01 | Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power |
| GRCC 09-04-01 | Inmate Death |
| GRCC 09-05-01 | Construction Crew Entry and Exit Guidelines |
| GRCC 09-06-01 | Entry and Exit Procedures |
| GRCC 09-07-01 | Institutional Inspections |
| GRCC 09-08-01 | Issuance of Weapons, Ammunition and Chemical Agents |
| GRCC 09-10-01 | Emergency Release from Locked Areas |
| GRCC 09-11-01 | Tool and Equipment Control |
| GRCC 09-12-01 | Key Control |
| KSP 09-08-01 | Searches and Preservation of Evidence [(Amended 9/13/00)] |
| KSR 09-00-04 | Horizontal Gates/Box 1 Entrance and Exit Procedure |
| KSR 09-00-09 | Contraband, Dangerous Contraband and Search Policy |
| KSR 09-00-27 | Construction Crew Entry/Exit |
| KSR 10-01-011 | Special Management - Behavior Problem Control |
| LLCC 09-01-02 | Priority Posts Assignments for Daily Operation [(Added 9/13/00)] |
| LLCC 09-01-03 | Emergency Security Posts Coverage [(Added 9/13/00)] |
| LLCC 09-06-01 | Central Control Center Operating Procedure [(Added 9/13/00)] |
| LLCC 09-06-02 | Central Control Count Documentation [(Added 9/13/00)] |
| LLCC 09-07-01 | Count Procedure [(Added 9/13/00)] |
| LLCC 09-07-02 | Count Documentation [(Added 9/13/00)] |
| LLCC 09-08-01 | Regulation of Inmate Movement [(Added 9/13/00)] |
| LLCC 09-08-02 | Unit Security and Emergency Procedure [(Added 9/13/00)] |
| LLCC 09-09-01 | Transportation of Inmates [(Added 9/13/00)] |
| LLCC 09-09-02 | Entry and Exit Control [(Added 9/13/00)] |
| LLCC 09-11-01 | Standards for Maintaining Perimeter Security [(Added 9/13/00)] |
| LLCC 09-11-02 | Perimeter Towers and Box #1 [(Added 9/13/00)] |
| LLCC 09-11-03 | Perimeter Patrol Officer [(Added 9/13/00)] |
| LLCC 09-11-04 | Outside Detail [(Added 9/13/00)] |
| LLCC 09-12-02 | Monitoring Staff and Visitors With the Computer System [(Added 9/13/00)] |
| LLCC 09-13-01 | Outside Hospitals and University of Louisville Hospital Security [(Added 9/13/00)] |
| LLCC 09-14-01 | Security Procedures for Print Shop [(Added 9/13/00)] |
| LLCC 09-15-01 | Emergency Redlight Response [(Added 9/13/00)] |

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

LLCC 09-15-02 Response Units [(Added 9/13/00)]
LLCC 09-16-02 Escape Plan [(Added 9/13/00)]
LLCC 09-17-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power [(Added 9/13/00)]
LLCC 09-18-02 Radio transmission Signal 10 Code Listing [(Added 9/13/00)]
LLCC 09-18-04 Procedure for Monitoring of Inmate Telephone Calls [(Added 9/13/00)]
LLCC 09-20-01 Weapons and Related Security Device Control [(Added 9/13/00)]
LLCC 09-20-02 Key Control [(Added 9/13/00)]
LLCC 09-20-07 Use of Protectojet Model #5 [(Added 9/13/00)]
LLCC 09-21-02 Use of Immobilization Control Unit or Electronic (ICE) Shield, Electronic Belt and Taser Gun [(Added 9/13/00)]
LLCC 09-21-03 Forced Cell Entry in a Housing Unit or Special Management Unit (SMU) [(Added 9/13/00)]
LLCC 09-22-01 Use of Restraints [(Added 9/13/00)]
RCC 08-08-01 Control and Use of Flammable, Toxic, and Caustic Materials
RCC 09-06-01 Search Policy/Disposition of Contraband

(2) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures of the Department of Corrections (Corrections) governing the operation of Green River Correctional Complex, which directs institutional employees in the safe and appropriate control of the inmate population and security of the institution.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the security operations of this institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to institutional employees as to their duties and responsibilities to insure the safe and secure operation of the institution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to the Green River Correctional Complex policies updates and brings the policies into line with Corrections secured policies and procedures.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Corrections and its divisions and institutions.

(d) How the amendment will assist in the effective administration of the statutes: It will make minor changes to conform to Chapter 13A, to allow a clearer understanding of the policies by institutional employees, thereby impacting the safety and security of the institution and the public.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Department of Corrections

Division of Local Facilities

(Amendment)

501 KAR 7:130. Inmate programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 13A.350, 441.055, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth procedures for resident programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that resident programs and services are available and include, but are not limited to, social services, religious services, recreation and leisure time activities and library services.

(2) Residents who perform work as authorized by KRS 441.125 [441.068] may receive rewards in the form of sentence reductions or other privileges, if granted by proper authority.

(3) Policy and procedures shall establish guidelines for residents as to acceptable means of transportation to and from work, school and programs.

(4) There shall be written procedures for the verification and monitoring of the resident's employment status. A written schedule shall be maintained for program release to include but not limited to:

time of departure, destination, telephone number and address of program location and time of return. Periodic monitoring of a resident's adherence to the approved schedule shall occur.

(5) Written procedures shall specify the monetary amount of reimbursement for room and board at the facility by the resident and the process by which these fees will be collected and used. Accurate records of receipts shall be maintained.

Section 2. Religious Programs. Written policy and procedure shall ensure the constitutional rights of residents to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the center.

Section 3. Recreation Programs. Written policy and procedure shall provide all residents with the opportunity to participate in an average of one (1) hour of recreational activity per day. Recreation programs may include but not limited to, such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

Section 4. Volunteers. The policy and procedure manual shall establish guidelines for the selection and use of volunteers in the facility.

Section 5. Inmate Programs and Services. (1) OJT work programs. State inmates shall be provided the opportunity to participate in OJT work programs in accordance with KRS 441.125. State inmates who have an approved custody level may be allowed to work on community service projects outside the jail when authorized by the jailer.

(2) Education programs. State inmates shall be provided the opportunity to attend adult basic education programs and pursue a GED.

(3) Substance abuse programs. State inmates shall be provided the opportunity to participate in substance abuse programs including AA or NA. State inmates who have been determined to have substance abuse problems shall be referred to outpatient treatment, which is available in the community. State inmates, who are in need of extensive substance abuse treatment and have been referred by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), when space is available.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures to be followed for resident programs and services in detention centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of

the authorizing statutes: The regulation governs every aspect of programs and services offered to residents in detention centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing to a resident the opportunity to participate in programs and take advantage of services offered to him in detention centers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments will comply with KRS Chapter 13A and provide the opportunity for residents in detention centers to attend adult basic programs and pursue a GED.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of jails.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will help detention centers to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 67 county jails which house state prisoners.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To provide clear and concise direction and information in the implementation of programs and services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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. County jails.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: None

JUSTICE CABINET
Department of Corrections
Division of Local Facilities
(Amendment)

501 KAR 10:130. Inmate programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100

STATUTORY AUTHORITY: KRS 13A.350, 441.055, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth procedures for inmate programs and services.

Section 1. Work Programs. (1) Written policy and procedure shall provide that inmate programs and services are available and include but are not limited to social services, religious services, recreation and leisure time activities and library services.

(2) Written policy and procedure shall provide that unsentenced inmates are not required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure which encourage the implementation of education programs in the jail. The utilization of community resources in these efforts shall also be encouraged to offset the costs of such programs.

(2) Education programs may be made available in accordance with KRS 439.179.

Section 3. Library Services. Where resources are available in the community, library services may be made available to all inmates.

Section 4. Religious Programs. Written policy and procedure shall ensure the constitutional rights to inmates to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the jail.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all inmates with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week when weather permits. Inmates who pose a threat to the safety and security of the jail may be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit inmates to participate in, but not be limited to, such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

Section 6. Inmate Programs and Services. (1) OJT work programs. State inmates shall be provided the opportunity to participate in OJT work programs in accordance with KRS 441.125. State inmates who have an approved custody level may be allowed to work on community service projects outside the jail when authorized by the jailer.

(2) Education programs. State I inmates shall be provided the opportunity to attend adult basic education programs and pursue a GED.

(3) Substance abuse programs. State inmates shall be provided the opportunity to participate in substance abuse programs including AA or NA. State inmates who have been determined to have substance abuse problems shall be referred to outpatient treatment, which is available in the community. State inmates, who are in need of extensive substance abuse treatment and have been referred by the Division of Mental Health, shall be allowed to participate in the substance abuse program (SAP), when space is available.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.

Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures to be followed for resident programs and services in detention centers.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of programs and services offered to residents in detention centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing to a resident the opportunity to participate in programs and take advantage of services offered to him in detention centers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments will comply with KRS Chapter 13A and provide the opportunity for residents in detention centers to attend adult basic programs and pursue a GED.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of jails.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will help detention centers to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 67 county jails which house state prisoners.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To provide clear and concise direction and information in the implementation of programs and services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998 – 2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the

agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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. County jails.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: None

TRANSPORTATION CABINET Department of Highways Division of Operations (Amendment)

601 KAR 1:020. Permit for hauling industrial materials; fee; bond.

RELATES TO: KRS 189.221, 189.222, 189.271

STATUTORY AUTHORITY: KRS 174.080, 189.271

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.271 empowers the Transportation Cabinet to promulgate [~~adopt~~] administrative regulations to implement the provisions as set forth therein for the issuance of a special permit to the owner, operator, or lessee of a motor vehicle for the purpose of hauling industrial materials whose gross weight, or dimensions, including vehicle and load, exceeds the limits set forth in or fails to comply with the requirements of KRS Chapter 189.

Section 1. Application. (1) All applications for an industrial haul [materials] permit authorized by KRS 189.271 shall be on forms prescribed and furnished by the Transportation Cabinet. Such forms shall be [~~are~~] available at any highway district office.

(2) An application for an industrial haul [materials] permit shall be submitted to the highway [chief] district office [engineer] having jurisdiction over the major portion of the proposed haul routes and shall be accompanied by a transportation plan.

(3) The transportation plan, in addition to such other information as may be required by the cabinet, shall indicate and identify [the portions of the state primary road system which the applicant intends to utilize in the transportation of industrial materials and the identities of] the highways and bridges on the state maintained [primary] road system over which the applicant proposes to transport industrial materials.

Section 2. Maintenance Agreement. (1) The Transportation Cabinet shall require a maintenance agreement with the applicant to insure upkeep of the highways and bridges which may become damaged by the overdimensional loads transported under authority of KRS Chapter 189.

(2) Any maintenance agreement entered into shall not be in lieu of, but shall be in addition to, any bond which may be required.

Section 3. Bond Requirements. (1) Industrial haul permit applicants who are and remain in good standing with the cabinet shall not be required to post bond.

(2) An industrial haul permit applicant who deviates from an existing transportation plan or fails to fulfill his obligations under an existing maintenance agreement may be required to post bond.

(3) If an operator of a vehicle owned or leased by an industrial haul permit applicant is convicted under KRS 189.990(2)(a) two (2) or more times within a five (5) year period, the applicant shall be required to post bond.

(4) The applicant shall be the principal obligor on any required industrial haul permit bond and the Commonwealth of Kentucky shall be the obligee.

(5) The bond amount shall be determined by the cabinet and not exceed \$6,000 per vehicle.

(6) The applicant may file a surety bond, corporate bond or self-insured bond which shall be conditioned upon compliance with the terms of the industrial haul permit application, transportation plan, maintenance agreement or an industrial haul permit issued by the cabinet.

(7) Applicants wishing to post a corporate or self-insured bond under subsection (6) of this section shall submit an affidavit from an independent financial institution verifying permanent net assets located in Kentucky, in an amount to be determined by the cabinet, not to exceed \$500,000.

(8) In the event the applicant's liability is discharged upon a bond, the cabinet may require the filing of a new bond.

(9) An existing industrial haul permit bond may be carried forward and applied to a revised or renewed industrial haul permit provided the cabinet has not gone against the bond, and provided there is not an increase in the potential damage to the state-maintained road system.

Section 4. Permit Terms and Conditions. (1) An industrial haul [materials] permit shall be valid for not more than three (3) years [one (1)-year] from the date of issuance.

(2) Multiyear industrial haul permits shall be subject to an annual review by the cabinet that may include:

- (a) Confirmation of the transportation plan;
- (b) Fulfillment of the maintenance agreement;
- (c) Bond status;
- (d) Valid KYU number; and
- (e) Valid license.

(3) A separate permit shall be required for each vehicle involved in the industrial haul operation.

(4) [proposed to be operated by the applicant:] A twenty (20) dollar per truck, per year permit fee shall be required, and made payable to the cabinet for each permit [which is] issued.

(5) An existing industrial haul permit may be renewed provided the applicant has complied with all the terms and conditions of the original industrial haul permit, permit application, transportation plan, and maintenance agreement.

(6) An industrial haul permit transportation plan may be revised once during the permitted year, not to exceed ten (10) miles of additional state-maintained road, and provided there is not an increase in the potential damage to the state-maintained road system.

(7) Trucks may be added to the industrial haul permit anytime for an additional permit fee of twenty (20) dollars per truck, per year.

(8) An industrial haul permit holder may specify a different material, subject to Section 5 of this administrative regulation, anytime at no additional cost.

Section 5. Load Types. [3:] The industrial haul [materials] permit shall be for the transportation of a specified material and shall allow the applicant to transport divisible or indivisible loads which a motor vehicle would transport in the usual and ordinary course of business. Said loads may include, but shall not be limited to, minerals or natural resources.

Section 6. Weight Restriction. [4:] Any industrial haul [materials] permit issued by the cabinet shall not allow a vehicle to exceed the gross weight for a vehicle as provided for in KRS 189.222.

Section 7. Additional Restrictions. [5:] Any industrial haul [materials] permit issued by the cabinet allowing for a variance in either height, width or length dimensions from the provisions in KRS 189.222, shall be restricted to use on the roads set forth in 603 KAR 5:070 and shall meet all safety requirements of the Transportation Cabinet and shall be subject to such other terms and conditions as the cabinet may impose.

Section 8. Revocation of Permit. [6- Any applicant convicted under the provisions of KRS 189.990(2)(a) two (2) or more times within a five (5) year period shall be required to give bond to the cabinet with an approved surety in an amount to be determined by the cabinet, said amount shall not exceed \$6,000 per vehicle. Additionally, upon conviction under KRS 189.990(2)(a) two (2) or more times within a five (5) year period, the cabinet may revoke the applicant's permit to transport industrial materials.] Any deviation from the approved industrial haul permit, permit application, transportation plan, or maintenance agreement shall be sufficient cause for the cabinet to revoke an industrial haul [materials] permit.

[Section 7. In the event the applicant is required to give a bond by the cabinet, the applicant shall be the principal obligor on the bond and the Commonwealth shall be the obligee. The bond may not exceed \$6,000 per vehicle and the applicant may file a corporate bond or a cash bond which bond may be conditioned upon compliance with the terms of any transportation plan and/or industrial materials permit issued by the cabinet. In the event the applicant's liability is discharged upon a bond, the cabinet may require the filing of a new bond.]

Section 8. The Transportation Cabinet may at its discretion require a maintenance agreement with the applicant to insure upkeep of the highways or bridges which may become damaged by loads transported under authority of an industrial materials permit. Any maintenance agreement entered into shall not be in lieu of, but shall be in addition to, any bond which might be required.]

JAMES C. CODELL, III, Secretary
J. M. YOWELL, P.E., State Highway Engineer
GERI GRIGSBY, Executive Director

APPROVED BY AGENCY: November 17, 2000

FILED WITH LRC: November 22, 2000 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be January 23, 2001, at 10 a.m. local prevailing time in the Transportation Cabinet, State Office Building, 10th Floor, General Counsel Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by January 16, 2001. 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 comments 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 requirement by January 16, 2001. 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 January 23, 2001. Send written notification of intent to attend public comment hearing or written comments on the administrative regulation to: Geri Grigsby, Executive Director, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Geri Grigsby

(1) Provide a brief summary of:

(a) What this administrative regulation does: Implement provisions for the issuance of a special permit for hauling industrial materials which exceed limits set forth in KRS Chapter 189.

(b) The necessity of this administrative regulation: Required by KRS Chapter 189.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation has been drafted in accordance with KRS Chapters 13A and 189.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth procedures for an application and the issuance of an industrial haul permit and maintenance agreement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment repeals the need for a bond by any applicant in good standing with the cabinet, and sets forth the standards for a bond to be posted by applicants who deviate from their transportation plan. It further requires the applicant to enter into a maintenance agreement covering the roads listed by the applicant for the transportation of industrial materials. It provides for an existing bond when required to be carried forward and applied to a renewed or revised permit.

(b) The necessity of the amendment to this administrative regulation: Required by KRS Chapter 189.

(c) How the amendment conforms to the content of the authorizing statutes: Makes required language revisions.

(d) How the amendment will assist in the effective administration of the statutes: Provides additional information and further clarifies the program as identified.

(3) List and type the number of individuals, businesses, organization, or state and local governments affected by this administrative regulation: All persons applying for an industrial haul permit.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. Maintenance agreements will be required which will be an added expense by the permit holders, but the permit renewal and bond roll over provision will reduce the operating costs and expenses of permit holders.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None known.

(b) On a continuing basis: None known.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None known.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees: No fees.

(9) TIERING: Is tiering applied? No. All applicants will be required to follow the same procedures.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education (Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)

STATUTORY AUTHORITY: KRS 156.070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review procedures for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;

(2) Sponsor an annual meeting of its member schools;

(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;

(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;

(5) Require its governing body to establish goals and objectives and perform a self-assessment and submit them annually to the KBE.

(6) Advise the Department of Education of all legal action brought against the KHSAA;

(7) Permit a board of control member to serve a maximum of two (2) four (4) year terms with no region represented for more than eight (8) years;

(8) Employ a commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;

(9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(10) Permit the Board of Control to assess fines on a member school;

(11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;

(12) Establish a philosophical statement of principles to use as a guide in an eligibility case;

(13) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 USC Section 1681 (Title IX);

(14) Conduct all meetings in accordance with KRS 61.805 through 61.850; and

(15) provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the KBE:

(a) Draft budget for the next two (2) years in November of each year;

(b) Annual audit with KHSAA Commissioner's letter addressing an exception within thirty (30) days of receipt of the audit; and

(c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.

(2) KHSAA shall submit a strategic plan to KBE by June 1 of each year.

(3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.

(4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:

(a) Athletic appeals;

(b) Eligibility rules;

(c) Duties of school officials;

(d) Contests; and

(e) Requirements for officials and coaches.

(5) KHSAA shall submit to KBE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of the individual, grade, school, and the action taken by KHSAA.

Section 4. The bylaws, tournament rules, due process procedures, and officials' guidebook of the KHSAA Handbook, October, 2000 [1999] shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association Handbook, October, 2000 [1999]", Kentucky High School Athletic Association, is incorporated by reference.

(2) This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

GENE WILHOIT, Commissioner of Education

HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 26, 2001, at 10 a.m. in the State Board Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by January 19, 2001, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone 502/564-4474, fax 502/564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures and rules for affected schools and districts.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The only change in the regulation is in the date on the KHSAA Handbook, which includes the KHSAA Constitution, Bylaws, and Due Process. The changes in the handbook are primarily changes in the bylaws:

1 A series of amendments clearly stipulating an 8 semester limitation on high school sports eligibility;

2. An amendment making uniform the start of play and practice of winter sports of basketball, wrestling, and swimming regardless of whether the school has a football team;

3. An amendment clarifying that the legal requirement that superintendents provide principals with a list of qualified candidates for coaching positions rather than making recommendations.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the constitution and bylaws. While they are not required to make changes to the constitution and bylaws, changes must be made through this process.

(c) How the amendment conforms to the content of the authorizing

statutes: The statute authorizes the KBE to designate an agency to manage high school interscholastic athletics. The regulation designates the KHSAA as that agent, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, and Due Process to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the bylaws are made annually, according to the process outlined in the constitution, and reflect input member schools and districts on changes that need to be made to provide a more sound structure of governance.

(d) How the amendment will assist in the effective administration of the statutes: See (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 school districts.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of District Support Services
(Amendment)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) program; KRS 157.360 bases SEEK funding upon average daily attendance; KRS 158.030, 158.100, and 159.030 require the age for compulsory school attendance; KRS 158.060 defines the school day and month and make-up of school days missed; KRS 158.070 defines the school term; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year prior to May 15 of each year. The calendar shall establish the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days and days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last

instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

Section 2. (1) The local board of education shall file the adopted school calendar with the Department of Education prior to June 1 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education prior to May 1 of each year. Subsequent amendments to the school calendar shall be submitted to the Department of Education no later than five (5) calendar days after the meeting of the local board of education at which the amendment is approved.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year which do not have to be made up, which occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar.

(3) Except for the provisions of subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

(2) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

Section 5. [(3)] A local board of education request for disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. [5:] (1) The following shall constitute the activities to be conducted during the instructional school day:

(a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 7. [6:] (1) Daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time in the morning, one (1) time in the afternoon and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure, parent or legal guardian signature and other information required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; or

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035.

(c) The pupil is participating in an off-site virtual high school class or block. A student in attendance in the class immediately preceding or following (where applicable) the designated virtual class or block, shall be counted in attendance for the virtual high school class. A student absent from the class immediately preceding or following (where applicable) the designated virtual class or block, shall be counted absent for the virtual high school class or block.

(5) Even if a pupil's absence is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 8. [7:] (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent less than thirty-five (35) percent of the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of the regularly scheduled school day for his grade level.

(4) A full-day absence shall be recorded for a pupil who is absent greater than eighty-four (84) percent of the regularly scheduled school day for his grade level.

(5) The percentages described in this section shall apply to the regularly scheduled school day approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 9. [8:] A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 10. [9:] A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school district shall be included in calculating the district's average daily attendance.

Section 11. [10:] If a local school district, under the provisions of

KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 12. [11:] (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) If a local school district enrolls a pupil who is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

Section 13. [12:] The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 14. [13:] (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local Superintendent's Annual Attendance Report prior to June 30 of each year.

Section 15. [14:] The superintendent's annual attendance report shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320. Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 16. [15:] (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 17. [16:] The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W06, W07, W13, W16 or W18 during the previous school year;

(4) R01 - A pupil received from another homeroom in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R03 - A pupil received from a nonpublic school in the same public school district;

(7) R04 - A pupil received from a public school in Kentucky outside this public school district;

(8) R05 - A pupil received from a nonpublic school in Kentucky

outside this public school district;

(9) R06 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E01, E02, or E03;

(11) R10 - An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;

(12) R11 - An expelled pupil received in the current school year, from a regional alternative facility not run by the expelling school district, prior to the completion of the expulsion period;

(13) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W01 shall be R01;

(14) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(15) W03 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 shall be R03;

(16) W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W04 shall be R04, R05, or R07;

(17) W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 shall be R04, R05, or R07;

(18) W06 - A pupil who is at least sixteen (16), but not yet eighteen (18) years of age and has withdrawn. The reentry code to use with W06 shall be R06;

(19) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local home-bound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(20) W08 - A pupil withdrawn due to death;

(21) W09 - A pupil graduated prior to the end of the school term or year;

(22) W10 - A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be R06 if the student returns to the expelling local school district in the current school year after the expulsion period has been completed. The reentry code to use with W10 shall be R10 if the student returns to the expelling local district in the current school year prior to completion of the expulsion period;

(23) W11 - A pupil who has been expelled for behavioral reasons withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be R06 if the student returns in the current school year after the expulsion period has been completed. The reentry code to use with W11 is R11 if the student returns in the current school year prior to completion of the expulsion period;

(24) W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(25) W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07, W10, W13, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R06;

(26) W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(27) W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the

school in accordance with 704 KAR 5:060; and

(28) W18 - A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R06.

Section 18. [47:] (1) The following suspension codes shall be used to indicate the suspension status of pupils:

(a) S - Suspension from school for one (1) full day; and

(b) N - Suspension from school for one-half (1/2) day.

(2) Suspension shall be considered an unexcused absence.

Section 19. [48:] The following expulsion codes shall be used to indicate the expulsion status of pupils:

(1) XP1 - A student expelled from school during the current school year for behavioral reasons, being provided educational services by the expelling local school district;

(2) XP2 - A student expelled from another local school district during the current school year for behavioral reasons, being provided educational services by a regional alternative facility not run by the expelling local school district;

(3) XP3 - A student expelled from school during the current school year for behavioral reasons, not being provided educational services.

(4) XE1 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by the local school district;

(5) XE2 - A student expelled from another local school district during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by a regional alternative facility not run by the expelling local school district; and

(6) XE3 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is not being provided educational services.

Section 20. [49:] The following ethnic codes shall be used to indicate the ethnic origin of pupils until June 30, 2002 [2000]:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

(6) 6 - Other.

Section 21. [20:] (1) Beginning July 1, 2002 [2000], the following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) H - Hispanic or Latino - A person of Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race; and

(2) N - Not Hispanic or Latino.

Section 22. [24:] (1) Beginning July 1, 2002 [2000], the following race codes shall be used to indicate the racial categories of pupils:

(a) W - White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(b) B - Black or African American - A person having origins in any of the black racial groups of Africa;

(c) H - Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;

(d) A - Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam; and

(e) I - American Indian or Alaska Native - A person having origins

in any of the original peoples of North America and South America (including Central America), and who maintains tribal affiliation or community attachment.

(2) More than one (1) racial category may be selected. Local school districts must be able to identify the number of students that have selected more than one (1) racial category as described in this section.

Section 23. [22:] (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report prior to June 30 of each year.

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file. The local board of education shall adopt a form or process to comply with the requirements of KRS 159.170.

Section 24. [23:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Growth Factor Report" file layout, dated July 15, 1999 [June 1, 1998];

(b) The "Superintendent's Annual Attendance Report" file layout, dated December 1, 1999 [July 1, 1996]; and

(c) The "Student Dropout Questionnaire" dated August 1, 2000 [June 1, 1998].

(2) This material may be inspected, copied, or obtained at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GENE WILHOIT, Commissioner of Education

HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 26, 2001, at 10 a.m. in the State Board Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by January 19, 2001, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a uniform method of recording pupil attendance.

(b) The necessity of this administrative regulation: The primary purpose of this administrative regulation is to ensure that uniform procedures are in place for the recording of pupil attendance by local school district. Attendance is a key component of the mechanisms by which state funds are distributed to local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 157.360 establishes the Support Education Excellence Program (SEEK) program, the program through which the majority of state funding is made available to local school districts. KRS 158.030, 158.100, and 159.030 are statutes related to compul-

sory attendance and this administrative regulation conforms to the requirements of those statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides uniformity.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The current administrative regulation requires students to be physically present to be counted in attendance. The Kentucky Virtual High School allows students to take courses, and receive credit, off site - if permitted by local board policy. This amendment provides a mechanism for counting those students in average daily attendance for funding purposes. The amendment will also cause the reporting of student racial and ethnic codes to be consistent with the reporting of this information to the federal government. The conditions under which a school district can apply for disaster days are clarified.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow local school districts to receive funding for students who are taking Kentucky Virtual High School courses off site. It is also necessary that the reporting of student racial and ethnic codes be consistent with the requirements of the federal government. There has been some confusion regarding disaster days and the process for applying for these. An amendment provides clear guidance for local school districts.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with the requirements of KRS 157.360 and other statutes related to compulsory attendance.

(d) How the amendment will assist in the effective administration of the statutes: The Kentucky Virtual High School is an excellent opportunity for high school students. The funding provided by the state for these courses is the same as the district would receive if the student was on site in a regular classroom. This amendment makes it possible for state funds to flow to the school district for these students. The amendment also eliminates any confusion as to the guidelines for requesting approval of disaster days.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 local school districts.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Local school districts will have available a process for receiving state funds for students taking Kentucky Virtual High School courses off site. The recording of student racial and ethnic codes will be consistent. A clearly defined process for applying for disaster days is not available.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No costs are involved.

(b) On a continuing basis: No costs are involved.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost involved in implementing this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No costs are involved.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:345. Evaluation guidelines.

RELATES TO: KRS 156.557 [156-104]

STATUTORY AUTHORITY: KRS 156.070, 156.557 [156-104]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(3)(c) [~~156.101(6)(e)~~] requires the Kentucky Board of Education to develop written guidelines for local school districts to follow in developing and implementing an evaluation system for certified employees. This administrative regulation establishes the requirements for the evaluation programs and policies of local school districts.

Section 1. Definitions. (1) "Administrator" means a certified staff person who devotes the majority of his employed time to service in a position for which administration certification is required by the Education Professional Standards Board in 704 KAR Chapter 20, ~~[as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, or school business administrator and shall include the superintendent and assistant, associate, or deputy superintendent.]~~

(2) "Conference" means a meeting involving the evaluator and the certified employee being evaluated for the purposes of providing feedback from the evaluator, analyzing the results of an observation or observations and other information to determine accomplishments and areas for growth leading to establishment or revision of a professional growth plan.

(3) "Evaluation" means:

(a) The process of assessing or determining the effectiveness of the performance of the certified employee in a given teaching and learning or leadership and management situation, and based on predetermined criteria, through periodic observation and other documentation including a portfolio, peer review, product or performance; and ~~[or]~~

(b) The establishment and monitoring of a professional growth plan.

(4) "Formative evaluation" is defined by KRS 156.557(3)(b)1 ~~[means a continuous cycle of collecting evaluation information and interacting and providing feedback with suggestions regarding the certified employee's professional growth and performance].~~

(5) "Indicators" means measurable or observable behaviors and outcomes that [which] demonstrate performance criteria.

(6) "Job category" means a group or class of positions with closely related functions (e.g., principal, coordinator, director).

(7) "Observation" means a process of gathering information in the performance of duty, based on predetermined criteria in the district plan.

(8) "Other support staff" means certified staff other than teacher or administrator.

(9) "Performance criteria" means performance areas, skills, or outcomes on which the certified employee shall be evaluated based on position and the district plan.

(10) "Position" means a professional role in the school district (e.g., teacher, secondary principal, supervisor of instruction).

(11) "Professional growth plan" means an individualized plan that includes:

(a) Goals for enrichment and development that are established by the person being evaluated with the assistance of an evaluator;

(b) Objectives, a plan for achieving the objectives, and a method for evaluating success; and

(c) Alignment with the specific goals and objectives of the school improvement plan or the district improvement plan; and

~~(d) Identification of school and district resources within available funds to accomplish the goals. [and professional development or transformation plans.]~~

(12) "Standards of performance" means acceptable qualitative or quantitative level of performance expected of effective teachers or administrators.

(13) "Summative evaluation" is defined by KRS 156.557(3)(b)2. ~~[means the summary of, and conclusions from, the evaluation data; including formative evaluation data, that:~~

~~(a) Occurs at the end of an evaluation cycle; and~~

~~(b) Includes a conference between the evaluator and the evaluated certified employee, and a written evaluation report.]~~

(14) "Teacher" means a certified staff person who directly instructs students.

Section 2. Each local school district shall have an evaluation plan

and procedures approved by the Kentucky Department [Board] of Education. Approval of the plan and procedures shall be for the purpose of certification as to the compliance of each specific school district's evaluation plan with the broad guidelines set forth herein.

Section 3. The local school district shall have a written policy for the evaluation of all certified employees consistent with KRS 156.557 [~~156.101~~].

Section 4. (1) An evaluation committee consisting of equal numbers of teachers and administrators shall develop evaluation procedures and forms for certified positions below the level of the district superintendent. The superintendent's evaluation process shall be developed and adopted by the local board of education. The evaluation procedures and forms shall be designed to foster professional growth and to support individual personnel decisions.

(2) The procedures shall provide for both formative evaluation and summative evaluation and shall include the following elements:

(a) The immediate supervisor of the certified school employee shall be designated the primary evaluator. Additional trained administrative personnel may be used to observe and provide information to the primary evaluator. If requested by the teacher, observations by another teacher trained in the teacher's content area or by curriculum content specialists shall be provided. The selection of the third-party observer shall, if possible, be determined through mutual agreement by evaluator and evaluatee. A teacher who exercises this option shall do so, in writing to the evaluator, by no later than February 15 of the academic year in which the summative evaluation occurs. If the evaluator and evaluatee have not agreed upon the selection of the third-party observer within five (5) working days of the teacher's written request, the evaluator shall select the third-party observer.

(b) The monitoring or observations of performance of a certified employee shall be conducted openly and with the full knowledge of the teacher or administrator. The local district may determine the length and frequency and nature of observations conducted by an evaluator.

(c) The evaluation system shall include a professional growth plan for all certified personnel below the level of superintendent aligned with specific goals and objectives of the school improvement plan or the district improvement plan ~~[and professional development transformation plans]~~ and shall be reviewed annually.

~~(d) The evaluation process developed for the local superintendent by the local board of education shall include provisions for assistance for professional growth of the superintendent, pursuant to KRS 156.111.~~

(e) Evaluation shall include a formative conference between the evaluator and the person evaluated within one (1) work week following each observation. In addition, the summative conference shall be held at the end of the evaluation cycle and include all evaluation data.

~~(f) [(e)]~~ Evaluation with multiple observations shall occur annually for each nontenured certified employee. The formative data collected during the beginning teacher internship period may be utilized in summative evaluation of the intern.

~~(g) [(f)]~~ Multiple observations shall be conducted with a tenured, certified employee whose observation results are unsatisfactory.

~~(h) [(g)]~~ Summative evaluation shall occur a minimum of once every three (3) year period for each tenured teacher.

~~(i) [(h)]~~ Summative evaluation shall occur annually for an administrator.

~~(j) [(i)]~~ The evaluation of a certified employee below the level of the district superintendent shall be in writing on an evaluation form and become a part of the official personnel record.

~~(k) [(j)]~~ The observations shall include documentation of information to be used in determining the performance of the evaluatee.

~~(l) [(k)]~~ The evaluation system shall provide an opportunity for a written response by the evaluatee and the response shall become a part of the official personnel record.

~~(m) [(l)]~~ A copy of the evaluation shall be provided to the evaluatee.

Section 5. (1) The evaluation form shall include a list of performance criteria characteristic of effective teaching or administrative practices. Under each criterion, specific descriptors or indicators that can

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

be measured or observed and recorded shall be listed. Additionally, standards of performance shall be established for each criterion. The performance criteria shall include those that apply to the employee being evaluated and that are identified within KRS 156.557(2). [the following:

- (a) ~~Performs professional responsibilities and duties as outlined in the job description including regular attendance and punctuality;~~
- (b) ~~Demonstrates effective classroom or staff management skills;~~
- (c) ~~Uses appropriate research-based instructional strategies and processes effectively;~~
- (d) ~~Demonstrates effective interpersonal, communication, and collaboration skills among peers, subordinates, students and parents;~~
- (e) ~~Demonstrates knowledge of subject matter or administrative techniques;~~
- (f) ~~Plans, implements, and evaluates instructional or administrative activities;~~
- (g) ~~Teaches in a manner that is consistent with missions to which the school, its school council, district board of education, and the Kentucky Board of Education are committed.;~~

(2) The evaluation criteria and process used to evaluate certified school personnel shall be explained to and discussed with certified school personnel [The certified school personnel shall be made aware] no later than the end of the first month of reporting for employment for each school year [of the criteria on which they are to be evaluated]. Amendments approved by the Kentucky Department of Education to local systems of certified personnel evaluation that occur after the end of the certified employees' first school month shall not apply to the employee until the following school year.

(3) An evaluation form or instrument shall be specific for each position or job category. Other forms for observation and pre- and postconferences may be used at the discretion of the local district.

Section 6. (1) The primary evaluator, with the exception of a district board of education member, shall be trained, tested, and approved as an evaluator by the Kentucky Department of Education [certified].

(2) Training shall:

(a) Include skill development in the use of the local evaluation process. Each local district shall conduct this training;

(b) Include skill development in the identification of effective teaching and management practices, effective observation and conferencing techniques, establishing and assisting with a certified employee professional growth plan, and summative evaluation techniques relative to the academic expectations in 703 KAR 4:060. This training shall be conducted by a provider who has been approved by the Kentucky Department [Board] of Education as a trainer for the Instructional Leadership Improvement Program;

(c) Be provided by the Kentucky Department of Education for all new administrators who are designated as evaluators. Other administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may participate also; and

(d) Be approved as a part of the evaluation plan and procedures submitted to the Kentucky Department [Board] of Education.

(3) Testing shall:

(a) Include a cognitive test of research-based and professionally accepted teaching and management practices and effective evaluation techniques listed in subsection (2)(b) of this section; and

(b) Be conducted by the Kentucky Department of Education or an individual or agency approved by the Kentucky [State] Department of Education.

(4) Initial approval [certification] as an evaluator shall be issued by the Kentucky Department of Education upon completion of the required evaluation training program and successful completion of testing.

(5)(a) Continued approval [certification] as an evaluator shall be contingent upon the completion of a minimum of twelve (12) hours of evaluation training every two (2) years.

(b) This training shall be in any one, or a combination, of the following skill areas:

- 1. Use of the local evaluation process;
- 2. Identification of effective teaching and management practices;
- 3. Effective observation and conferencing techniques;
- 4. Establishing and assisting with certified employee professional

growth plans; [or]

5. Summative evaluation techniques; or

6. Completion of training or update training in the Kentucky Teacher Internship Program in 704 KAR 20:690 or Kentucky Principal Internship Program in 704 KAR 20:470 not to exceed six (6) hours per two (2) year cycle.

(6) Each local district shall designate a contact person responsible for monitoring evaluation training and implementing the evaluation plan.

Section 7. For an appeal to the local evaluation appeals panel, each local evaluation plan shall provide for the following:

(1) Right to a hearing as to every appeal; and

(2) Opportunity reasonably in advance of the hearing for the evaluator and evaluatee to adequately review all documents that are to be presented to the evaluation appeals panel; and

(3) Right to presence of evaluatee's chosen representative.

Section 8. (1) The local board of education shall review as needed the evaluation plan to ensure compliance with KRS 156.557 [156.104] and this administrative regulation.

(2) If a substantive change is made to the evaluation plan, the local board of education shall utilize the evaluation committee, as provided for in Section 4 of this administrative regulation, in formulating the revision.

(3) Examples of substantive change shall include a change in:

(a) Cycle;

(b) Observation frequency;

(c) A form; or [and]

(d) An appeal procedure.

(4) A revision to the plan shall be reviewed and approved by the local board of education and submitted to the Kentucky Department [Board] of Education for approval.

Section 9. (1) A certified employee who feels that the local district is not properly implementing the evaluation plan according to the way it was approved by the Kentucky Department [Board] of Education shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as follows:

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the State Evaluation Appeals Panel. Its jurisdiction shall be limited to procedural matters already addressed by the local appeals panel required by KRS 156.557(5) [156.104(10)]. The panel shall not have jurisdiction relative to a complaint involving the professional judgmental conclusion of an evaluation, and the panel's review shall be limited to the record of proceedings at the local district level.

(b) No later than thirty (30) days after the final action or decision at the local district level, the certified employee may submit a written request to the chief state school officer for a review before the State Evaluation Appeals Panel. An appeal not filed in a timely manner shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with this request.

(c) A brief, written statement, and other document which a party wants considered by the State Evaluation Appeals Panel shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the appeals panel shall be rendered within fifteen (15) working days after the review.

(e) A determination of noncompliance shall render the evaluation void, and the employee shall have the right to be reevaluated.

GENE WILHOIT, Commissioner of Education

HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 26, 2001, at 10 a.m. in the State Board Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by January 19, 2001, five working days prior to the hearing, of their intent to attend. If no notification of intent

to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone 502/564-4474, fax 502/564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the evaluation programs and policies of local school districts.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of 2000 Ky. Acts Ch. 527 (KRS 156.557).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the development, implementation, and assessment of local school districts' evaluation plans for certified personnel, pursuant to KRS 156.557.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the requirements for the evaluation programs and policies of local school districts.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will create clarity and ease of understanding of the requirements in the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: SB 77, adopted by the 2000 Session of the Kentucky General Assembly, created a new chapter of KRS 156 that established some new and different criteria and requirements for the process of certified personnel evaluation. KRS 156.557 requires the Kentucky Board of Education to establish statewide standards for evaluation, including minimum criteria and requirements. In order to implement these new criteria and requirements, the current regulation must be amended.

(c) How the amendment conforms to the content of the authorizing statute: Evaluation guidelines and the criteria by which local certified personnel evaluation plans are approved are set by the newly created KRS 156.557. This regulation is the source of information for local school districts to assure compliance with the minimum content and structure that must be included in local evaluation plans prior to their approval by the state.

(d) How the amendment will assist in the effective administration of the statutes: Evaluation guidelines and the criteria by which local certified personnel evaluation plans are approved are set by the newly created KRS 156.557. This regulation is the source of information for local school districts to assure compliance with the minimum content and structure that must be included in local evaluation plans prior to their approval by the state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school district administrators identified as primary evaluators of certified personnel, all local school district evaluation contact personnel, all local evaluation committees, all local boards of education.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All groups referenced above will be involved in, and impacted by the development, implementation, and assessment of local district certified personnel evaluations plans.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation. However, there will be an increase in the use of consultant and secretarial time to revise existing training materials, an increased use of consultant time to provide mandated training to administrators identified as primary evaluators, and an increased use of consultant time to review, approve, and monitor all local districts' certified evaluation plans. In addition, local school districts will experience similar costs for staff time in reviewing and revising their local district evaluation plans.

(b) On a continuing basis: Increased use of secretarial and consultant time to complete the department specific activities, and local school district activities identified within current statute and amended regulation

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: These funds will be provided from the existing operating budget of the Division of Instructional Leadership Development.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish fees or directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the amended administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1)(a), (b), (c), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (c), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require [requires] that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(a) directs the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.028(1)(c) grants the Education Professional Standards Board the authority and responsibility to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for [classroom] teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 704 KAR 20:696 for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 704 KAR 20:305.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 704 KAR 20:690.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) [(4)] "Experienced teacher standards" means the standards established in 704 KAR 20:730 that identify what an effective experienced teacher shall know and do.

(8) "New teacher standards" mean the standards established in 704 KAR 20:730 that identify what a new teacher shall know and be able to do.

(9) [(5)] "Professional teaching certificate" means the document issued to an individual upon successful completion of the beginning teacher internship and to an applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) [(6)] "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject/area which can be taught under this limited certificate.

(12) [(7)] "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:

(a)1. At least a bachelor's degree with a cumulative grade point average (GPA) of 2.50 on a 4.0 scale; or

2. As required by Section 4(2)(g)5 and (4)(e) [(h)5] of this administrative regulation, a master's degree with a cumulative grade point average (GPA) of 2.50 on a 4.0 scale;

(b) An approved program of preparation; and

(c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The experienced teacher standards established in 704 KAR 20:730; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or

(b) Completion of the professional development plan and a partial portfolio for the continuing education option defined in 704 KAR 20:022, Section 4(2).

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or

(b) Completion of the professional development plan and a full portfolio for the continuing education option defined in 704 KAR 20:022, Section 4(1).

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 704 KAR 20:060. [

(a) Completion of three (3) years of successful teaching experience with continuing growth as documented in a portfolio; or

(b) Completion of at least six (6) semester hours of graduate credit related to the profession of teaching by September 1 of the year of expiration.]

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on [ensure that a teacher:]

(a) The new teacher standards established in 704 KAR 20:730;

(b) The accreditation and program approval standards established in 704 KAR 20:696, including the content standards of the relevant

national specialty program associations; and [Has the knowledge and skills for the instruction of all children including an intellectually gifted and talented child or a child with a disability;

(b) Is proficient in the:

1. Use of technology; and

2. Instruction for multiage and multiability grouping; and]

(c) [Has the knowledge and skills to implement] The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base [teaching] certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084;

(b)1. Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school;

2. The elementary certificate shall be valid for teaching grade six (6) if grade six (6) is taught in a self-contained classroom or in a school organization in which grade six (6) is housed with grade (5) in the same building.

3. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c)1. Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies.

2. Middle school option 2: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

a. English and communications;

b. Mathematics;

c. Science; or

d. Social studies;

3. [2.] A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under subsections (2) or (3) of this section, including but not limited to certification for teaching exceptional children, [teaching exceptional children as provided in paragraph (g) of this subsection] shall be required to complete one (1) middle school teaching field;

(d) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

1. English;

2. Mathematics;

3. Social studies;

4. Biology;

5. Chemistry;

6. Physics; or

7. Earth science [Biological science; or

5. Physical science];

(e) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

1. Agriculture;

2. Business and marketing education;

3. Family and consumer science; [or]

4. Industrial education; or

5. Technology education;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;

2. A foreign language;

3. Health;

4. Physical education;

5. Integrated music; [or]

6. Vocal music;

7. Instrumental music; or

8. School media librarian;

(g) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;

2. Moderate and severe disabilities[; 704 KAR 20:251];

3. [Teacher of deaf and hard of] Hearing impaired;

4. Hearing impaired with sign proficiency;

5. Visually impaired; [or]

6. [5.] Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, and requires a master's degree in communication or speech language pathology, 704 KAR 20:500(2); or

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, and requires only a baccalaureate degree in communication or speech language pathology, 704 KAR 20:500(3).

(3) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(a) Psychology, grades eight (8) through twelve (12);

(b) Sociology, grades eight (8) through twelve (12);

(c) Journalism, grades eight (8) through twelve (12);

(d) Speech/media communications, grades eight (8) through twelve (12);

(e) Theatre, primary through grade twelve (12);

(f) Dance, primary through grade twelve (12);

(g) Computer information systems, primary through grade twelve (12); or

(h) English as a second language, primary through grade twelve (12).

(4) An endorsement [;

(h) Endorsements] to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations [paragraphs (a) through (g) of this subsection, valid for all grade levels, for the following]:

(a) [1.] Computer science, grades eight (8) through twelve (12);

(b) [2.] English as second language, primary through grade twelve (12);

(c) [3.] Gifted education, primary through grade twelve (12);

(d) [4.] Driver education, grades eight (8) through twelve (12); [or]

(e) [5.] Reading and writing and requires a master's degree in reading, primary through grade twelve (12);

(f) Instructional computer technology, primary through grade twelve (12);

(g) Other instructional services - school safety, primary through grade twelve (12); or

(h) Other instructional services - school nutrition, primary through grade twelve (12). The endorsement for school nutrition may be obtained by either:

1. Completion of the requirements of Section 5(2) of this administrative regulation; or

2. Obtaining the school food service and nutrition specialist (SFSN) credential issued by the American School Food Service Association (ASFSA).

(i) Learning and behavior disorders, grades eight (8) through (12);

1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and

2. This endorsement shall only be issued to candidates with preparation/certification for a base or restricted base certificate for the secondary grades eight (8) through twelve (12).

Section 5. Additional Certification. (1) A certificate extension shall be issued for any base or restricted base certificate area offered in Section 4(2) or (3) and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement shall be issued for any area listed in Section 4(4) of this administrative regulation and shall require:

(a) A valid base or restricted base certificate, including a statement of eligibility;

(b) Successful completion of the applicable assessments; and

(c) Recommendation from an approved preparation program.

Section 6. Candidates pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. (1) For purposes of admission and completion of advanced and administrator preparation programs, the following certificates shall not be considered classroom teaching certificates:

(a) School media librarian;

(b) Exceptional children - communication disorders;

(c) Exceptional children - communication disorders/SLPA only;

(d) School nurse certification issued under 704 KAR 20:132;

(e) School psychologist certification issued under 704 KAR 20:128;

(f) School social worker certification issued under 704 KAR 20:194 or 704 KAR 20:195; and

(g) Junior Reserve Officer Training Corps certification issued under 704 KAR 20:260.

Section 8. [Section 5. Additional Certification. A candidate who holds a certificate valid for classroom teaching shall qualify for additional certification upon:

(1) The recommendation of an approved institution of higher education, which shall include consideration of the performance standards; and

(2) The successful completion of each required Education Professional Standards Board assessment applicable to the additional certification being sought.

Section 6. Effective Dates. (1) The provisions for the issuance of a teaching certificate for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning January 1, 1998.

(2) A candidate admitted prior to January 1, 1998, under one (1) or more of the following administrative regulations shall complete the program by September 1, 2000: 704 KAR 20:057, 20:070, 20:080, 20:095, 20:105, 20:115, 20:135, 20:145, 20:146, 20:159, 20:160, 20:161, 20:175, 20:180, 20:229, 20:230, 20:235, 20:255, 20:275, 20:280, 20:290, 20:340, 20:500, 20:520, and 20:570.

(3) A candidate who fails to complete the program by September 1, 2000, and does not apply for the certification by January 1, 2001 shall be required to qualify for the certification identified in this administrative regulation.

(4) A candidate admitted to an advanced level preparation program prior to September 1, 1998, shall:

(a) Complete the program by September 1, 2003; and

(b) Apply for the certification by January 1, 2004.

(5)(a) A candidate who is admitted to the preparation program for the interdisciplinary physical science secondary certificate prior to September 1, 2001 shall complete the program by September 1, 2003 and apply for certification by January 1, 2004.

(b) A candidate who fails to complete the preparation program for the interdisciplinary physical science secondary certificate by September 1, 2003 and does not apply for certification by January 1, 2004 shall be required to qualify for one (1) or more of the secondary science certificates in physics, chemistry, or earth science established in this administrative regulation.

(6) The Education Professional Standards Board shall communicate to the Kentucky a college or university approved for these programs the effective date for admission to each new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform a candidate in the program regarding the deadline dates.

Section 9. Application for certification or additional certification shall be made on Form TC-1.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference: Form TC-1, rev. 9/2000, Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained at the

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair

APPROVED BY AGENCY: December 15, 2000

FILED WITH LRC: December 15, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held January 24, 2001, at 1 p.m. in the Council on Post-secondary Education Conference Room A, 1024 Capital Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 17, 2001, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary Ellen Wiederwohl

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the types of Kentucky certificates to be issued for teaching positions.

(b) The necessity of this administrative regulation: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board (EPSB). KRS 161.028 directs the EPSB to establish the standards for obtaining and maintaining a teaching certificate and grants the EPSB authority and responsibility to issue and renew any certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the certificates for teaching positions required in KRS 161.020 and 161.030. This administrative regulation establishes the standards for and directs the issuance and renewal of teaching certificates as required by 161.028.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the types of certificates issued for teaching positions in Kentucky; the certificates are differentiated by grade range and content area. This administrative regulation establishes the standards necessary for obtaining and maintaining a teaching certificate and the procedures by which the EPSB shall issue and renew a teaching certificate.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will add more certification options, including new certificates and greater flexibility in obtaining additional certifications. The amendment also clarifies the policy and procedure for issuance of a teaching certificate and the standards required for obtaining and maintaining a teaching certificate. Material has been incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation governing teaching certificates are necessary to meet the staffing needs of the public schools. The changes in certificate options, including those for both content areas and grade ranges, will allow greater flexibility in the issuance of certificates to applicants with broad and discrete area(s) of preparation. The amendment also introduces the concept of a certificate extension which allows a certified teacher to add other certification area(s) through proficiency evaluation and assessment instead of an unnecessarily lengthy preparation program. The technical amend-

ments are necessary to clarify the business practice by which the EPSB issues and renews teaching certificates.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes new certification options for teaching positions required in KRS 161.020 and 161.030. This amendment aligns the standards for and establishes the policy and procedure for the issuance and renewal of teaching certificates as required by 161.028.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the new types of certificates issued for teaching positions in Kentucky; the certificates are differentiated by grade range and content area. This amendment aligns the standards necessary for obtaining and maintaining a teaching certificate and the procedures by which the EPSB shall issue and renew a teaching certificate. The amendment will provide greater staffing flexibility for school districts, allow teachers and teacher candidates more certificate options, and clarify EPSB policy and procedure for the issuance and renewal of teaching certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 40,000 Kentucky public school teachers will have more certification options. 3,000+ teacher candidates will have more certification options. 176 Kentucky school districts will have more staffing flexibility. Kentucky's 27 teacher preparation institutions will have more preparation program options.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will give certified teachers greater opportunity to gain additional certifications. It will allow teacher candidates more options for initial certification. It will give the school districts more options in hiring and assigning certified teachers. It will give the teacher preparation institutions more options for approved programs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. The 27 Kentucky colleges/universities may choose to implement preparation programs for the new certificate options; the institutions may require additional funding or a reallocation of existing funding to accomplish this action. There is no additional cost to teachers, teacher candidates, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. Following the initial expenditure or reallocation for program alignment, the colleges/universities should not experience any need for long term additional funding to implement this amendment. There is no additional cost to teachers, teacher candidates, or school districts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding necessary for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does NOT directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Yes. Teaching certificates are issued in different content areas and grade ranges. Some certifications cover broad content areas or grade ranges; other certifications can be for more discrete subject fields or more narrow grade ranges. The standards for obtaining and maintaining a teaching certificate under this regulation are the same; however, the eligibility requirements may vary based on the route to certification (i.e., traditional baccalaureate or MAT preparation versus an alternative route defined in KRS 161.028 or 161.048).

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Amendment)

780 KAR 3:120. Appeals and hearings.

RELATES TO: KRS Chapter 13B, 151B.035, EO 2000-990

STATUTORY AUTHORITY: EO 2000-990 [KRS 151B.035]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2000-990 (August 8, 2000) [KRS 151B.035] requires the Commissioner of the Department for [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 an appeal system for aggrieved employees [the certified and equivalent staff governing appeals].

Section 1. Definitions. (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).

(2) "Qualified individual with a disability" is defined by KRS 344.030(1).

(3) "Reasonable accommodation" is defined by KRS 344.030(6).

(4) "Religion" is defined by KRS 344.030(7).

(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. General Provisions. (1) An appeal or a document relating to an appeal [Appeals] shall be filed with the Technical Education Personnel Commission [State Board for Adult and Technical Education] through the office of the ombudsman [secretary] of the Department for Technical Education [board].

(2) An appeal or document relating to an appeal [Appeals] shall be filed within thirty (30) calendar days after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence. If [as specified in KRS Chapter 151B, Section 9(8)(c). When] the 30th day of the filing period falls on a day when the Department for Technical Education [office of the secretary of the board] is closed during normal working hours, the appeal may be filed on the next regular working day.

(3) An appeal [Appeals] shall be heard in Frankfort, Kentucky or in a location mutually acceptable to the hearing officer and the employee. The hearing officer shall make the final determination of the location of the hearing.

(4) If the appeal form indicates that the [appealing] employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the [appealing] employee shall be submitted by that attorney.

(5)(a) Unless otherwise directed by the commission, the ombudsman of the Department for Technical Education [board, the secretary of the board] shall assign a hearing officer or officers to an [each] appeal.

(b) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief.

(c) If the appeal is to be heard by the full commission [board], the chairman of the commission shall serve as the chief hearing officer.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal.

Section 4. [2.] Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause.

(2) A [The] request for continuance shall:

(a) Be written;

(b) [be in writing;] State the reason for the request;

(c) [and] Include proposed dates for rescheduling the hearing;

(d) [- The request shall] Be filed with the commission; and

(e) Be [board through the office of the secretary of the board and] mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) An objection to a request for a continuance shall:

(a) Be written;

(b) State the reason for the objection to the request for continuance;

(c) Be filed with the commission;

(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

[(2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board through the office of the secretary of the board within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.]

(4) [(3)] A continuance may be granted in extraordinary circumstances by the hearing officer.

(5) [(4)] A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(6)(a) [(5) All requests for continuance shall be ruled on by the hearing officer.] At the direction of the hearing officer, the ombudsman of the Department for Technical Education [secretary of the board] shall execute and transmit to all parties an interim order either granting or denying the continuance.

(b) If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or the hearing has been continued generally.

Section 5. [3.] Prehearing Procedures. (1) A motion, request or filing shall:

(a) [All motions, requests or filings shall] Be in writing;

(b) Be [-] filed with the commission [board] through the office of the ombudsman of the Department for Technical Education; [secretary] and

(c) Be served on all other parties.

(2)(a) An [Any] interim order by the hearing officer shall be executed and transmitted by the commission through the ombudsman of the Department for Technical Education [secretary of the board] to all parties.

(b) Unless an interim order provides for review by the commission prior to the conclusion of a hearing, the commission shall review an interim order when it considers the recommended order, record, and exceptions. [Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.]

(3) If an [appealing] employee retains counsel subsequent to filing an [his] appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the [appealing] employee shall be submitted by that attorney.

(4) An [appealing] employee shall notify all parties and the commission [board] in writing of a [any] change of address.

(5) A deposition [A list of witnesses who may be called to testify shall be filed by each party at least seven (7) days prior to the scheduled hearing. Failure of either party to file a witness list within the prescribed time shall restrict that party to rebuttal.]

(6) Subpoena forms shall be available in the office of the secretary of the board and shall be issued by the secretary of the board. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(7) Depositions may be taken only in an extraordinary circumstance [circumstances] and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. An objection to the request [Any objections] shall be filed prior to the scheduled hearing.

(8) [(8)] Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of a party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

(9) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matters which will facilitate the hearing.]

(7) An agreed settlement [(10) Any agreed settlements] shall be

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

submitted in writing for the full commission's [board's] review and final action.

(8) The ombudsman of the Department for Technical Education [(11) The secretary of the board], general counsel, and commission [board] staff may participate in ex parte communication concerning pending and impending proceedings before the commission [board] relating to:

- (a) Procedural questions.
- (b) Scheduling of hearings.

Section 6. [4:] Conduct of Hearing. (1) The hearing shall be conducted pursuant to:

- (a) KRS Chapter 13B; and
- (b) This administrative regulation.

(2) Unless the appeal is heard by the full commission [board], the hearing officer assigned shall hear the appeal. ~~(The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing and shall be authorized to require compliance with his rulings.~~

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party:

- (3) ~~The rules of civil procedure do not apply.~~

(4) ~~The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross-examination. The opposing party shall then present its case, examine witnesses and submit documentation, subject to cross-examination.]~~

(3) A party [(5) All parties] shall provide three (3) copies of an [any] exhibit that [which] is to be introduced as evidence. Copies shall be prepared prior to the hearing unless otherwise authorized by the hearing officer.

Section 7. Commission Review and Action. (1) A response to a written exception to a recommended order may be filed by a party within five (5) days after the date the written exception is filed with the commission. A response shall be:

- (a) In writing; and
- (b) Served on all parties.

(2) [(6) ~~The proceedings and evidence presented shall be recorded by a court reporter.~~

Section 5. Findings and Recommendations; Exceptions. (1) ~~Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record:~~

(2) ~~At the direction of the hearing officer, the recommended order shall be entered and transmitted by the secretary of the board to all parties:~~

(3) ~~Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the secretary of the board within twenty (20) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered and served on all parties:~~

(4) ~~Any party may submit a written response to exceptions filed with the board. The response shall be filed with the board through the office of the secretary of the board within ten (10) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties:~~

(5) ~~Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the commission [board] in making a final determination.~~

(3) At the request of a party or on its own motion, the commission may permit oral arguments before the full commission. A request for oral argument shall be:

- (a) In writing;
 - (b) Filed with the commission within fifteen (15) days of issuance of a recommended order; and
 - (c) Served on all parties.
- (4) The commission [Section 6. Board Review and Action. (1) The

board] may adopt as submitted the findings and recommendations of the hearing officer, amend the findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing officer for further action as appropriate.

(5) [(2)] Following consideration by the full commission [board], a final order shall be entered disposing of the appeal. The order shall be prepared, executed, and entered at the direction of the commission by the ombudsman of the Department for Technical Education. [secretary of the board. Copies of the order shall be transmitted to all parties by the secretary of the board.]

Section 8. Incorporation by Reference. (1) Appeal Form (revised 9/2000), is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMIL JEZIK, Commissioner

APPROVED BY AGENCY: November 20, 2000

FILED WITH LRC: November 29, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001 at 1:30 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by January 12, 2001, five 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 cancelled. The 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: Sherry R. Deatrick, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes appeals procedures for certified and equivalent employees within the KRS Chapter 151B personnel system.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to comply with EO 2000-990.

(c) How this administrative regulation conforms to the content of the authorizing statute: EO 2000-990 authorizes the Commissioner of the Department for Technical Education to promulgate administrative regulations for personnel policies and procedures for certified and equivalent employees within the KRS Chapter 151B personnel system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for filing appeals under the KRS Chapter 151B personnel system.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment is technical in nature to reflect reorganization of the Department for Technical Education and to conform more closely to administrative regulations promulgated by the Personnel Cabinet for employees in the KRS Chapter 18A system. It replaces references to the State Board for Adult and Technical Education with the Technical Education Personnel Commission, and incorporates by reference the forms to be used by certified and equivalent employees for appeals in the KRS Chapter 151B personnel system.

(b) The necessity of the amendment to this administrative regulation: The State Board for Adult and Technical Education has been

abolished and its personnel functions have been delegated to the Technical Education Personnel Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is technical in nature.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide a procedure for the appeals process that is consistent with EO 2000-990.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 525 employees in the KRS Chapter 151B personnel system.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The grievance process is not being changed substantively. The amendment is technical in nature.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: No change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Yes. The administrative regulation applies only to state employees who are governed by the KRS Chapter 151B personnel system.

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: None

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Not applicable.

WORKFORCE DEVELOPMENT CABINET Department for Technical Education (Amendment)

780 KAR 3:130. Employee grievances.

RELATES TO: KRS 151B.035, EO 2000-990

STATUTORY AUTHORITY: EO 2000-990 [KRS-151B.035]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2000-990 [KRS-151B.035] requires the Commissioner of the Department for Technical Education [State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035 which govern the process for a fair and equitable grievance system.

Section 1. Definition. A grievance is any complaint filed by an employee which concerns working conditions over which the Department for [Adult and] Technical Education has control and which has specifically occurred or of which the employee has become aware within thirty (30) calendar days prior to filing.

Section 2. General Provisions. (1) Any employee in the certified and equivalent personnel system who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this procedure.

(2) Any grievance concerning an action which is appealable directly to the Technical Education Personnel Commission [State Board for Adult and Technical Education pursuant to KRS Chapter 151B, Section 16;] may also be filed with the Department for [Adult and] Technical Education. The filing of a grievance with the department does not prohibit the employee from also filing an appeal with the Technical Education Personnel Commission [State Board for Adult and Technical Education]; however, it shall not extend the thirty (30) calendar day appeal period.

(3) Employees utilizing this procedure shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) The appointing authority shall inform all employees in the Department for [of Adult and] Technical Education of the provisions of this administrative regulation, or any modifications in the levels of review [which have been approved by the State Board for Adult and Technical Education pursuant to Section 4(7) of this administrative regulation].

(5) The Commissioner of the Department for [Adult and] Technical Education shall make available to employees, through the appointing authority, a uniform grievance form to be used filing a grievance. The form shall contain a notice in bold print that, if the grievance concerns an action appealable directly to the Technical Education Personnel Commission [State Board for Adult and Technical Education pursuant to KRS Chapter 151B, Section 16] the employee's right to file an appeal is not extended beyond thirty (30) calendar days.

Section 3. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) calendar days following occurrence or the employee becoming aware, through the exercise of the due diligence, of the action which is the subject of the grievance.

(2) The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) When a grievance is filed that alleges harassment or discrimination on the basis of race, color, religion, national origin, sex, disability [handicap] or age forty (40) or over, the recipient shall immediately notify the Commissioner of the Department for [Adult and] Technical Education and the Department EEO Coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Both parties shall be given the opportunity to have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (1) The immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance. If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the second line supervisor [respective regional executive director if in Kentucky tech centers, state technical schools, regional offices, or correctional centers. If the grievance is from an employee in the central operation, then the employee may request review to the respective division director]. If the area supervisor [regional executive director in the Kentucky Tech System] or the division director [in the Kentucky Tech System] is first line supervisor, then the request for review is automatically requested from the Ombudsman for the Department for [Adult and] Technical Education. [If the division director (other than in the Kentucky Tech System) is the first line supervisor, then the request for review is automatically requested from the office head in the Department for Adult and Technical Education.]

(2) The second line supervisor [regional executive director or the division director] shall, upon investigation, issue findings and a decision.

sion in writing to the employee within ten (10) working days after receipt of the grievance. If the second line supervisor [regional-executive director-or-the-division-director] is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the ombudsman [or-the-respective-office-head] in the Department for [Adult-and] Technical Education.

(3) If the ombudsman [or-respective-office-head] is unable to mediate the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the Commissioner of the Department for [Adult-and] Technical Education for a final determination. The commissioner, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) working days.

(4) Modification of the procedures set forth in this section necessary to accommodate organizational structure within the Department for [Adult-and] Technical Education may be made only upon approval of the Commissioner of the Department for Technical Education [State Board for Adult and Technical Education].

(5) Failure of supervisory or management personnel to respond within prescribed time limits shall be grounds for the advancement of the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(6) Any intermediate grievance level may be waived by written agreement of the parties.

Section 5. Incorporation by Reference. (1) Grievance Form (revised 9/2000), is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMIL JEZIK, Commissioner

APPROVED BY AGENCY: November 28, 2000

FILED WITH LRC: November 29, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001 at 1:30 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by January 12, 2001, five 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 cancelled. The 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: Sherry R. Deatruck, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, telephone: (502) 564-6606, fax number: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatruck, General-Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes grievance procedures for certified and equivalent employees within the KRS Chapter 151B personnel system.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to comply with EO 2000-990.

(c) How this administrative regulation conforms to the content of the authorizing statute: EO 2000-990 authorizes the Commissioner of the Department for Technical Education to promulgate administrative regulations that are necessary to implement a grievance procedure for certified and equivalent employees within the KRS Chapter 151B personnel system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for filing a grievance under the

KRS Chapter 151B personnel system.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment is technical in nature to reflect reorganization of the Department for Technical Education. It replaces references to the State Board for Adult and Technical Education with the Technical Education Personnel Commission, deletes references to regional offices and correctional centers, and incorporates by reference the grievance form to be used by certified and equivalent employees in the KRS Chapter 151B personnel system.

(b) The necessity of the amendment to this administrative regulation: The State Board for Adult and Technical Education has been abolished; the Department for Technical Education no longer is organized into regional office and no longer operates facilities in correctional centers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is technical in nature.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide a procedure for the grievance process that is consistent with EO 2000-990.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 525 employees in the KRS Chapter 151B personnel system.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The grievance process is not being changed substantively. The amendment is technical in nature.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: No change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Yes. The proposed administrative regulation will affect only certified and equivalent positions in the KRS Chapter 151B system. It does not apply to unclassified positions under KRS Chapter 151B.

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. None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Not applicable.

**WORKFORCE DEVELOPMENT CABINET
Department for the Blind
Business Enterprises Division
(Amendment)**

782 KAR 1:010. Federal Vocational Rehabilitation Program.

RELATES TO: KRS 163.470(11), 34 CFR Part 395, 20 USC 107b [163.450 to 163.470]

STATUTORY AUTHORITY: KRS 163.470(5), 34 CFR 395.4, 20 USC 107b(5) [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS [163.450 to] 163.470(5) requires the department to establish and implement policies and procedures for administering the program of services for the blind and visually impaired. This administrative regulation establishes the operational requirements for the business enterprises program by the state licensing agency for the federal Randolph-Sheppard Vending Facility Program. [designates the Department for the Blind to be responsible for all rehabilitation services for citizens of the Commonwealth of Kentucky who are blind and visually impaired. These administrative regulations adopt federal rules governing the services, personnel, and administration of the Department for the Blind required as a condition for the agency to receive federal funds and to administer federal vocational rehabilitation programs. PL 93-516, as amended, requires the submission to the Commissioner of Rehabilitation Services, Department of Education, an application for designation as state licensing agency to administer the Randolph-Sheppard Vending Facility Program.]

Section 1. Definitions. (1) "Active participation" means an ongoing process between the department and the State Committee of Blind Vendors for joint planning and input on program policies, standards, and procedures which does not supersede the department's final authority to administer the program.

(2) "Agreement" means a written contract entered into between the department and property management authorizing the establishment of a vending facility and setting forth the service obligations.

(3) "Applicant" means an eligible individual who has been referred by a counselor to be screened for participation in the Kentucky Business Enterprises (KBE) Vendor Training Program.

(4) "Commissioner" means the commissioner of the Kentucky Department for the Blind.

(5) "Counselor" means a vocational rehabilitation counselor in the Department for the Blind.

(6) "Department" means the Department for the Blind which is the state licensing agency for the Randolph-Sheppard Vending Facility Program in Kentucky.

(7) "Director" means the Division Director of Kentucky Business Enterprises.

(8) "Eligible individual" means a consumer who has met criteria to receive vocational rehabilitation services from the department.

(9) "Kentucky Business Enterprises (KBE)" means a division of the department.

(10) "Licensee" means an eligible individual who:

(a) Has successfully completed the KBE Vendor Training Program;

(b) Has been licensed to operate a KBE vending facility; and

(c) Is not managing a vending facility.

(11) "Manager" means a vendor in a vending facility who is responsible for the facility's operation.

(12) "Seniority" means an accumulated period of time during which a vendor has operated KBE vending facilities.

(13) "Trainee" means an eligible individual who has been selected for and is actively participating in the KBE Vendor Training Program leading to licensure.

(14) "Vending facility" means a food sales operation within the meaning of 34 CFR 395.1(x) operated on state, federal, or private property under the auspices of KBE by a vendor.

(15) "Vendor" means a licensee operating a vending facility under terms of the agreement(s), permit(s), and/or contract(s) relating to the vending facility.

(16) "Vendor agreement" means a written contract entered into between the department and a KBE vendor authorizing the vendor to

operate a vending facility at a specific location and setting forth the responsibilities of the parties thereto with respect to the vending facility.

Section 2. Training and Licensure. (1) Eligibility Criteria.

(a) An applicant shall be screened to enter the KBE vendor training program upon submission of documentation by the counselor and the eligible individual which establishes the following criteria:

(b) Visual diagnosis as defined in the federal Randolph-Sheppard Act at 20 USC section 107e(1);

(c) Citizen of the United States;

(d) Certification that the consumer meets the general criteria of eligibility for vocational rehabilitation services from the department;

(e) High school diploma or GED certification;

(f) Math skills at an eighth-grade level or above;

(g) Financial skills for operating a vending business;

(h) Verbal and communication skills;

(i) Public relations skills;

(j) Personal hygiene and appearance for meeting the public;

(k) Independence in performing daily living activities;

(l) Mobility skills.

(2) KBE screening process for training program. The screening committee shall be composed of the KBE division director or designee, the chair of the State Committee of Blind Vendors or designee; a KBE vendor appointed by the chair of the State Committee of Blind Vendors; and the Director of Client Services or a designee (designee may not be the counselor of applicant).

(3) KBE Vendor Training Program.

(a) The KBE training shall provide on-the-job work experience and classroom instruction leading to licensure as a KBE vendor.

(b) The curriculum and training manual for the KBE training program shall be developed with the active participation of the State Committee of Blind Vendors to ensure that a trainee, upon completion of the program, can demonstrate proficiency in all aspects of KBE vending facility operation.

(c) Upon successful completion of the training program, the department shall award a vendor license to the trainee.

Section 3. KBE Vendor License. (1) License Conditions.

(a) A license to operate KBE vending facilities shall be issued for an indefinite period of time.

(b) The department shall provide management services and training to assist the vendor in fulfilling the terms of the agreement.

(c) KBE shall conduct periodic management reviews, vending facility surveys, and financial audits of vending facilities and records. If information is obtained that the vending facility is not meeting operation standards or if the vendor is falling short of performance standards as determined by KBE, remedial steps shall be identified and reviewed by KBE staff with the vendor. Specific training, where appropriate, shall be made available to remedy any deficiency. The department may require the vendor to participate in training provided by and/or arranged for by KBE.

(d) The department shall terminate the license of a vendor if, after affording the vendor the opportunity for a full evidentiary hearing, the department finds that:

1. The vending facility is not being operated in accordance with these KBE administrative regulations, the terms and conditions of the permit or agreement, or the terms and conditions of the vendor agreement with the vendor; or

2. The vendor's vision has improved so that the vendor no longer meets the definition of blindness in 34 CFR 395.1(c) of the federal implementing regulations to the Randolph-Sheppard Act.

(2) Leave of absence. The department may grant a vendor a leave of absence from a vending facility of up to one (1) year for reasons of health, pregnancy, or personal reasons after a written request with justification is approved by the director. The vendor shall retain accrued seniority, but shall not accrue any seniority during the leave of absence. If the vendor is unable to return to the vending facility at the expiration of the approved leave of absence, the vendor must resign from that vending facility or be subject to termination of the vendor agreement to operate the vending facility.

(3) Resignation.

(a) Resignation from a vending facility shall result in a vendor

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

returning to licensee status with the right to bid on vending facility vacancies and retention of accrued seniority.

(b) Resignation from KBE shall result in loss of the vendor's license with retention of all accrued seniority.

Section 4. Vendor Vacancy. (1) The department may determine that a vendor vacancy exists when:

(a) A new vending facility is established; or

(b) An existing vending facility manager's position is vacated.

(2) When a location becomes available that might support more than one (1) vending facility, the number and types of facilities shall be determined by the director with the active participation of the State Committee of Blind Vendors to prevent unfair competition.

(3) When the manager's position becomes vacant in a multivendor vending facility, the assistant manager shall assume the manager's position. The assistant position shall be abolished.

Section 5. Vendor Appointment. (1) Announcement of vacancy.

(a) When a vending facility manager vacancy is identified, the director shall notify all licensees and vendors of the available position.

(b) Announcements of a vacancy shall be made in alternative format and shall include the closing date and time by which bids must be received by the director.

(c) Information on the vending facility's operation requirements, previous vending facility gross sales, and arrangements for visitation of the vending facility shall be included in the announcement.

(2) Bids. Any vendor or licensee may make an application for any vacancy by submitting the bid form to the director by the bid closing date. All bids shall be considered without regard to race, color, national origin, gender, religion, age, political affiliation, and disability.

(3) Selection.

(a) The director shall appoint a vendor to manage each vending facility.

(b) Except in cases of emergency appointment, the director shall solicit the active participation of no fewer than three (3) representatives of the State Committee of Blind Vendors (appointed by the committee chair) on each vending facility manager appointment.

(c) The selection process begins with compilation of the seniority of each bidder. Beginning with the bidder with the most KBE seniority, the director and committee representatives shall review that bidder's business practices as documented in the KBE vending facility files in such areas as:

1. Customer relations;

2. Cooperation with property management;

3. Cooperation with KBE staff;

4. Complaints and commendations;

5. Timely and accurate submission of monthly financial reports and set-aside payments;

6. Financial management;

7. Recordkeeping;

8. Audit reports; and

9. Nonnegotiable payments to KBE or suppliers.

(d) The committee representatives shall advise the director of their first and second choice recommendations. The director shall balance the most senior bidder's documented business practices with the requirements of the specific vending facility vacancy. If the bidder's business practices are satisfactory as they relate to the specific vending facility requirements, in the judgment of the director, the bidder with the highest KBE seniority shall be offered the appointment to the vending facility vacancy.

(e) If the bidder with the most KBE seniority is not offered the appointment under the criteria of this section or declines the appointment, the director applies the criteria of this section to the next bidder with the highest KBE seniority until a bidder is selected and appointed by the director.

(f) If two (2) or more bidders have equal KBE seniority, each bidder's business practices as they relate to meeting the vending facility requirements shall be balanced by the director. The most qualified bidder for the specific vending facility vacancy, in the judgment of the director, shall be selected and offered the appointment by the director.

(g) Consideration of KBE licensees with no KBE seniority shall be based on:

1. KBE training test scores;

2. On-the-job training reports;

3. Formal education;

4. Prior work history.

(4) Appointment. The successful bidder shall be notified of appointment to the vacancy in alternative format as necessary. All appointment letters shall be mailed by certified mail. The appointee shall respond to the director in writing, postmarked within five (5) working days after receipt of the appointment letter to accept or reject appointment. In the absence of a written response, the offer of appointment is rescinded. The director shall select a new appointee.

(5) Emergency appointment. The department shall make an emergency appointment of a vendor, licensee, or a nonlicensed individual to any vending facility vacancy where time does not permit adherence to the vendor appointment process for such occurrences as leave of absence, appointment of a manager to another vacancy, death, or health emergencies. A licensee placed by emergency appointment shall accrue seniority for the duration of the emergency appointment period. The State Committee of Blind Vendors shall be notified in writing of an emergency appointment and the expected duration of the appointment.

Section 6. Saleable Stock Inventory Acquisition. (1)(a) When a licensee is in "ready for employment" status and is placed as a manager of a vending facility, a saleable stock inventory shall be provided by the licensee's counselor on a one (1) time basis not to exceed \$5,000. This amount may be paid to stock wholesalers, inter-accounted to KBE if the initial stock at the vending facility is owned by KBE, or to the vendor exiting the vending facility.

(b) The amount and type of stock necessary for the successful operation of a vending facility shall be determined by the director or designee.

(c) Payment for additional stock, above the \$5,000, needed for the vending facility shall be the responsibility of the licensee. If the licensee must seek financing for the additional stock, KBE may purchase the stock on the licensee's behalf after KBE has been provided proof that no other funding is available from financial institutions such as, the Small Business Administration or banks. The licensee shall make affordable monthly payments to KBE up to the value of the stock purchases as set forth in a repayment schedule negotiated and signed by both the licensee and the department's representative.

(2)(a) When a vendor transfers, through the KBE bid process, from one (1) vending facility to another at which KBE owns an initial saleable stock inventory, the entering vendor must purchase from KBE the initial inventory valued at wholesale costs.

(b) Inventory above the initial value at the vending facility shall be bought by the entering vendor from the exiting vendor at wholesale costs through an arrangement between vendors. KBE shall not be a party to that arrangement. KBE staff shall advise what type and amount of stock should be at the vending facility, whether as the beginning inventory or additional inventory.

(c) Or, the exiting vendor, at his discretion, may choose to dispose of the stock inventory at the vending facility which is above the KBE-owned type and amount of product considered initial stock. The entering vendor shall then be responsible for additional stock purchases above the KBE-owned amount. KBE may make stock purchases on behalf of the entering vendor after KBE has been provided proof that no other funding is available from financial institutions such as, the Small Business Administration or banks. The vendor shall make affordable monthly payments to KBE up to the value of the stock purchases.

(3) In cases of emergency appointments of a vendor to an existing vending facility at which the initial saleable stock inventory is owned by KBE, ownership shall be retained by KBE. Needed inventory above the initial amount at the vending facility may be purchased, at wholesale cost, from the exiting vendor by KBE, or KBE may purchase inventory from wholesalers. The emergency appointee shall be responsible for maintaining a stock inventory value equivalent to the KBE-owned inventory at the vending facility. When a permanent vendor appointment is made, the appointed vendor shall make arrangements to purchase the entire stock inventory from KBE.

(4) When an emergency appointment is made to a new vending facility where there is no existing stock inventory, KBE shall purchase the initial inventory.

(5) When an emergency appointment is made to a vending facility where the exiting vendor has been granted a leave-of-absence, the emergency appointee shall accept responsibility for total inventory of the vending facility and shall maintain an inventory of equal value, in either saleable stock or cash equivalent during the entire emergency assignment.

Section 7. Vendor Administrative Remedies and Procedures. (1) Mediation.

(a) Mediation is an informal option which allows a vendor to seek resolution of a dispute with a departmental action arising from the operation or administration of the vending facility program which adversely affects him. Participation in the mediation process is voluntary on the part of the vendor. The mediation process shall not be used to deny or delay the vendor's right to pursue resolution of the dispute through an evidentiary hearing.

(b) Within fifteen (15) working days from the occurrence of any departmental action arising from the operation or administration of the vending facility program which adversely affects the vendor, a mediation may be requested in writing to the director. The department shall maintain a list of qualified mediators. The director with the agreement of the vendor shall choose a mediator from the list and schedule a mediation meeting to be concluded within thirty (30) working days of the receipt of a request. The mediation shall be held at a department office convenient to the aggrieved vendor during regular state working hours. Reasonable accommodations shall be provided upon request.

(c) A representative of the department shall attend who is authorized to bind the department to an agreement. The aggrieved vendor shall attend and may be represented by an advocate or counsel. If the vendor and department mutually agree to a resolution, the mediation agreement shall be signed before the mediation is concluded. Discussion or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or arbitration.

(d) If no mutually agreeable resolution is obtained, the vendor may request an evidentiary hearing within fifteen (15) working days of the unresolved mediation.

(2) Evidentiary hearing. A vendor may request an evidentiary hearing in writing to the director within fifteen (15) working days of an unresolved mediation or from a department action arising from the operation or administration of the vending facility program which adversely affects the vendor. The department shall conduct an evidentiary hearing requested by the vendor pursuant to KRS Chapter 13B. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may seek judicial review in accordance with the provisions of KRS Chapter 13B.

(3) Arbitration. A vendor who is dissatisfied with the final agency decision entered in the evidentiary hearing may request a federal arbitration by filing a complaint with the Commissioner of the Rehabilitation Services Administration in the United States Department of Education pursuant to 34 CFR 395.13.

Section 8. State Committee of Blind Vendors. The State Committee of Blind Vendors shall be established to actively participate with the department in the major administrative and policy decisions affecting the overall administration of the Randolph-Sheppard Vending Facility Program and to perform other functions consistent with 34 CFR 395.14.

(1) Election procedures. The department shall provide for the biennial election of the State Committee of Blind Vendors consistent with procedures established by the general assembly of all blind vendors in accordance with 34 CFR 395.14.

(2) Meetings of the committee.

(a) The State Committee of Blind Vendors shall meet at least quarterly with the director or his designee in attendance. The announcement of the meeting with agenda as drafted by the committee chairperson and the director, shall be mailed to the committee members by KBE. Mailings shall be prepared in alternative format as necessary.

(b) The KBE staff shall record the official minutes of meetings and prepare and mail to all vendors after approval of the committee chair. These may be mailed in alternative format as necessary.

(c) KBE shall make committee meeting space available to the chairperson for business of the State Committee of Blind Vendors.

The director and committee chair shall develop an annual committee budget. Expenses incurred by the committee members in conducting the four (4) quarterly meetings shall be reimbursed from the committee's annual budget consistent with current state travel regulations. Additional meetings may also be eligible for reimbursement with the approval of the KBE director or department commissioner.

(d) The State Committee of Blind Vendors shall adopt bylaws. Bylaws must be approved by the department.

Section 9. Vendor's Rights and Responsibilities. (1) Enter into an agreement with the department for the operation of a Randolph-Sheppard vending facility under the auspices of KBE prior to beginning operation of a vending facility.

(2) Operate the vending facility in accordance with accepted-business practices and in compliance with all federal, state, and local laws, regulations, and ordinances applicable to the operation of the vending facility.

(3) Assure proper daily operation of the vending facility to meet the requirements of the permit or agreement and vendor agreement in a business-like manner. Managers must be on-site to assure compliance with the service obligations specified in the permit or agreements for the vending facility.

(4) Maintain high-quality fresh merchandise in a quantity sufficient to satisfy customer needs.

(5) Maintain presentable personal hygiene, appearance, and vending facility sanitation to assure pleasant accommodations for all customers.

(6) Provide adequate pest control and janitorial services unless otherwise specified in the vendor agreement.

(7) Post in a conspicuous place a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18) pursuant to KRS 438.310 in any vending facility where tobacco products are sold.

(8) Require proof of age from a prospective buyer or recipient of tobacco products who may be under the age of eighteen (18).

(9) Clean, fill, and service machines and equipment daily to assure proper functioning. Report promptly to KBE any needed repair of equipment.

(10) Obtain prior written approval from the director before purchasing equipment for a KBE vending facility from personal funds. If approved, arrange and pay for repair and maintenance and removal, when necessary, of such equipment.

(11) Employ and pay a substitute during times of vendor absence from a vending facility due to vacation or sickness unless the department has made an emergency appointment for an extended leave. Preference may be given to qualified blind or visually-impaired persons when selecting substitutes.

(12) Cooperate with vending facility audits performed periodically at KBE expense.

(13) Pay the monthly set-aside amount based on net profits of all vending facilities on schedule:

(a) The monthly set-aside payments are to be received by the department on or before the 20th of the following month by check or money order made payable to the Kentucky State Treasurer.

(b) Late set-aside payments shall result in a twelve (12) percent annual interest charge plus a five (5) percent penalty for each thirty (30) day period or portion thereof for which the set-aside payment is in arrears, up to a maximum of twenty-five (25) percent.

(c) A twelve (12) percent annual interest charge shall be assessed for nonnegotiable checks received until the date a replacement certified check or money order is received.

(d) A ten (10) dollar service charge shall be due for a nonnegotiable check.

(e) Once a nonnegotiable check is received from a vendor, all future payments made by the vendor shall be by certified check or money order.

(14) Pay resaleable stock suppliers promptly and retain all invoices and receipts.

(15) Include rebates, commissions, and/or bonuses received by the vendor from suppliers as income of the vending facility and account for such on the monthly vending facility financial report submitted to KBE.

(16) Utilize department-established accounting practices and bookkeeping procedures including the establishment of a business

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

bank account to ensure that personal and vending facility funds are not commingled. Make available to the department upon request bank statements and other vending facility business records for audit purposes and to satisfy ongoing financial accountability standards.

(17) Submit a monthly vending facility financial report to be received by the department on the 20th of the following month. Only the expenses listed below may be deducted as operating expenses on reports to the department:

- (a) Expendable supplies used in vending facility;
 - (b) Substitutes for vendor while vendor is not present at the vending facility due to sick or annual leave;
 - (c) Rental and commission fees paid to building management as stipulated in the vending facility agreement;
 - (d) Telephone and utility expenses of vending facility;
 - (e) Pest control services;
 - (f) Delivery charges paid on resaleable stock;
 - (g) Janitorial services;
 - (h) Liability insurance;
 - (i) License and permits required by health departments;
 - (j) Employee wages;
 - (k) Employee fringe benefits.
- (18) Reimburse at wholesale cost the vending facility for merchandise taken from the vending facility for personal use or charitable donation.

(19) Be responsible for payment of any taxes levied or assessed on the operation of the vending facility including, but not limited to, local, state, and federal taxes.

(20) Obtain, maintain in effect, and pay all premiums of the following insurance coverage:

(a) Comprehensive general liability insurance including personal injury, bodily injury, and product liability to meet minimum policy limits set by KBE in compliance with the terms of the vending facility permit. Such policies must insure against any liability which may occur from the operation by the vendor of the vending facility or in connection with the premises.

(b) Pay workers' compensation, Social Security, unemployment compensation, disability insurance, and such other insurance coverage required by law for both the vendor and vendor's employees.

(c) Submit proof of insurance as required by this section to KBE. All policies shall provide for notice to KBE of any cancellation, termination, or nonrenewal of coverage.

(21) Shall not bind or obligate the department or represent to any entity that the vendor is a legal representative, agency, or employee of the department.

(22) Shall not remove or move any KBE-owned equipment located at any vending facility without approval from the director.

(23) Shall maintain a separate business bank account for deposit of all lottery sales and proceeds in any vending facility participating in lottery games for which the manager personally has applied and been approved for the sale of lottery tickets by the Kentucky Lottery Corporation.

(24) Adhere to initial stock inventory rules established by the department in Part VI of these administrative regulations.

(25) Cooperate with KBE staff in the ongoing supervision and monitoring of the vending facility to maximize efficiency, productivity, customer satisfaction, and market potential.

(26) Participate in training arranged and paid for by the department as required by KBE to correct-identified deficiencies and to improve business skills. Vendors may request approval from the department for vending facility management training.

(27) May request access to all program and financial data of KBE as provided for by the Kentucky Open Records Law and federal Randolph-Sheppard Act. Such data may be made available in alternative format. At a vendor's request, the department shall arrange a convenient time for a staff member to assist in the interpretation of such data.

(28) Shall have the opportunity to read and respond to all complaint(s) or commendation(s) placed in a KBE file. A copy of the complaint or commendation shall be delivered to the named vendor by certified mail. Any response received from the vendor named in the complaint or commendation shall be filed with the complaint or commendation in the KBE file.

Section 10. Department's Rights and Responsibilities. (1) Enter permits or agreements with property management administrators on suitable federal, state, and other property to establish vending facilities.

(2) Assist in stocking vending facilities with initial resaleable products as set forth in Part VI of these regulations.

(3) Provide new and existing vending facilities with sufficient equipment to meet the terms of the permit or agreement for operation of each vending facility. The department shall:

(a) Retain ownership of all equipment provided and paid for by KBE in each vending facility;

(b) Repair, or cause to be repaired, replace, or maintain all vending facility equipment provided by KBE;

(c) Approve or deny vendor requests for replacement equipment when justified.

(d) Purchase additional equipment for vending facilities if sufficiently justified in terms of the vending facility potential and permit/agreement obligations. Review vendor requests for additional equipment with accompanying justification for such investment. KBE shall make the final decision and notify the vendor.

(e) Approve requests, when justified, for vendor-purchased equipment.

(4) Develop financial controls to ensure financial accountability of each vending facility.

(5) Establish a set-aside amount to be paid by each vending facility manager assessed on the monthly net proceeds of the vending facility.

(6) Establish reasonable charges for delinquent monthly set-aside payments and nonnegotiable checks, and take disciplinary action for persistent delinquency and/or nonnegotiable checks.

(7) Periodically conduct or provide for accountability reviews of vending facility financial documentation relating to the vending facility operation. Provide or provide for temporary assistance and/or training to any vendor determined to be remiss in recordkeeping and/or reporting. If such temporary assistance or training does not correct the deficiency, the department may require the vendor to utilize qualified bookkeeping services.

(8) Contract for periodic audits of each vending facility at department expense.

(9) Inventory and establish the wholesale value of the on-hand saleable stock inventory when a vendor leaves a vending facility.

(10) At any time a vendor appointment is made, KBE shall take or contract for the taking of an inventory of all on-hand resaleable stock, valued and calculated at wholesale cost.

(11) Determine the product types and quantities necessary for successful operation of a vending facility when appointing a vendor to a vending facility.

(12) Provide each licensee with a copy of KBE administrative regulations in alternative format as necessary.

(13) Provide each vendor with a copy of all relevant materials pertaining to the operation of the vendor's assigned vending facility in alternative format as necessary.

(14) Provide ongoing monitoring and supervision of each vending facility to ensure compliance with operating agreements, permits, laws, regulations, vending facility service obligations, and generally-accepted business practices.

(15) Provide or provide for ongoing training as identified by KBE staff or requested by a vendor and approved by the director.

Section 11. Confidentiality. (1) All identifiable personal information concerning applicant, licensee, and vendors is confidential consistent with 34 CFR 361.38 and 782 KAR 1:050. Identifiable personal information consists of documentation from an individual's vocational rehabilitation consumer file. Access to or release of the confidential personal information is governed by the provisions of 34 CFR 361.38 and 782 KAR 1:050. If the personal information is released in response to a judicial order, the applicant, licensee, or vendor shall be notified by KBE within two (2) working days from receipt of the judicial order.

(2) All KBE documents and files pertaining to the operation of KBE vending facilities are public records pursuant to KRS Chapter 61. The KBE files consist of business records concerning the operation of vending facilities and are maintained by the department consistent

with its public purpose. Any information from KBE files pertaining to the operation of KBE vending facilities may be included in bids issued for vendor vacancies and may be shared with members of the State Committee of Blind Vendors to assist their active participation during vendor selection. (Pursuant to the authority vested by KRS 163.450 to 163.470, the Kentucky Application for Designation for the Randolph-Sheppard Vending Facility Program, effective November 15, 1979, as amended December 15, 1987, is presented herewith for filing with the Legislative Research Commission and incorporated by reference. A copy of said application may be obtained from the Department for the Blind, Education and Humanities Cabinet.)

DENISE M. PLACIDO, Commissioner

APPROVED BY AGENCY: December 15, 2000

FILED WITH LRC: December 15, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 26, 2001 at 1:30 p.m. at the Department for the Blind, 209 St. Clair Street, P.O. Box 757, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, January 19, 2001, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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: Sue G. Simon, JD, Legal Counsel, Department for the Blind, 209 St. Clair Street, P.O. Box 757, Frankfort, Kentucky 40602, (502) 564-4754, FAX (502) 564-2951. The meeting facility is accessible to people with disabilities. The department will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate the hearing. If an interpreter or other auxiliary aid or service is needed, please contact Sue G. Simon at the address above.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sue G. Simon, Legal Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It enumerates the eligibility requirements and rights and responsibilities for participation in the federal vending facility licensing program.

(b) The necessity of this administrative regulation: The federal Randolph-Sheppard Act and regulations require that the state licensing agency promulgate rules governing the participation in the federal vending facility program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It addresses all aspects of eligibility, licensing, appeal, appointment, and rights and responsibilities for participation in the federal vending facility program as prescribed by the Randolph-Sheppard Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The federal law requires the state licensing agency to promulgate uniform rules by which it will administer the federal vending facility program. This regulation publishes those uniform rules for interested applicants and licensed vendors in satisfaction of the federal mandate.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It publishes for the first time the existing administrative regulation which is incorporated by reference. It updates the existing terms and conditions of licenses, appointment procedures for a vending facility vacancy, appeal rights, State Committee of Blind Vendors, confidentiality provisions, and the respective departmental and vendor rights and responsibilities. Cumulatively, it conforms the existing regulation to procedures for the operation and administration of the Kentucky Business Enterprises Program which have been revised and approved by the Department for the Blind and the State Committee of

Blind Vendors.

(b) The necessity of the amendment to this administrative regulation: The existing regulation was promulgated in 1988 and these amendments reflect the operation of the state licensing program in conformity with the requisite evolution of the federal vending facility program.

(c) How the amendment conforms to the content of the authorizing statutes: It addresses the requisite state rights and responsibilities of licensed vendors participating in the Kentucky Business Enterprises Program as enumerated in the federal law and implementing regulations.

(d) How the amendment will assist in the effective administration of the statutes: The federal law requires the state licensing agency to promulgate uniform rules by which it will administer the federal vending facility program. This regulation publishes those uniform rules for interested applicants and licensed vendors in satisfaction of the federal mandate.

(3) List the type and number of individuals, business, organization, or state and local governments affected by this administrative regulation: There are 70 currently licensed Randolph-Sheppard vendors; the number of which may fluctuate from attrition, new trainees, new facility opportunities, etc. Licensed vendors may manage Kentucky Business Enterprises Program vending facilities in state, federal, or other buildings of which there are currently 59 locations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The licensees and licensed vendors will benefit from the publication and notice of the updated rules governing their participation in the Kentucky Business Enterprises Program. These revisions are substantively minor but mirror the evolution in the administration and operation of the federal vending facility program as interpreted by the federal Rehabilitation Services Administrative policy guidance and approved by the State Committee of Blind Vendors for Kentucky.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$1,265,000

(b) On a continuing basis: Essentially same depending upon available contractual revenues.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal 110 Rehabilitation Funds and interstate vending contractual commissions.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this regulatory amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations governing applicants or licensed participants in the federal vending facility program as administered by the state licensing agency.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Randolph Sheppard Act, 20 USC107 et seq., and federal implementing regulations at 34 CFR Part 395.

2. State compliance standards. This administrative regulation amends the state procedures for participation in the Kentucky Business Enterprises Program administered by the Department for the Blind which is the state licensing agency for the federal Randolph Sheppard Vending Facility Program.

3. Minimum or uniform standards contained in federal mandate. The federal mandate requires participating states to adopt policies and procedures as are necessary for the administration of the federal vending facility program.

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 or imposition of the stricter standards, or additional

or different responsibilities or requirements. The federal law requires each state licensing agency to establish procedures by which individuals may apply for and participate in the federal vending facility licensing program. Additionally, licensed vendors may appeal decisions concerning the state administration of the Kentucky Business Enterprises Program. This regulation delineates the participant's rights and responsibilities under the federal vending facility licensing program as administered by the Kentucky Business Enterprises Program. It is not more rigorous; simply more explanatory.

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 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:

LABOR CABINET

Department of Workers' Claims (Amendment)

803 KAR 25:110. Workers' compensation managed health care plans.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish procedures and standards for certification of workers' compensation managed health care system health care plans pursuant to KRS 342.020. The function of a managed care plan is to assure that quality medical care will be delivered to the injured employee at a reasonable cost so as to expedite the injured employee's recovery and facilitate return to work.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain. "Emergency care" does not include follow-up care, except when immediate care is required to avoid serious disability or death.

(3) "Gatekeeper physician" means any qualified physician, as defined in KRS 342.0011, acting within the scope of his license and designated by a managed care plan as a "gatekeeper" empowered to make referrals of patients to other providers for specialized care or diagnostic services.

(4) "Managed health care system" means a health care network that utilizes gatekeeper physicians, performs utilization review, and does medical bill audits.

(5) "Managed care plan" means a written plan describing the operations of a managed health care system.

(6) "Provider" means any person or entity licensed, certified, or registered to provide medical services.

(7) "Revocation" means the termination of a managed health care plan certificate to provide services under the Kentucky Workers' Compensation Act prior to expiration of the certificate.

(8) "Service area" means a geographic area consisting of a county or group of counties of which no county shall be subdivided.

Section 2. Certification Process. (1) All managed care plans shall be certified by the commissioner. Any managed health care system may apply to have a plan or plans certified by the commissioner. Managed health care systems may operate one (1) or more plans.

(2) Applications for initial certification and renewal shall be submitted, in triplicate, in a form acceptable to the commissioner and shall contain the following information:

(a) System identification.

1. System name and address.

2. Date and state of incorporation.

3. Name, address, and phone number of each corporate officer and director, and of the person who will be the day-to-day plan administrator.

4. Name and address of each owner of more than five (5) percent of the stock or controlling interest in the entity.

5. Name, address, and phone number of the medical director, who shall be a medical doctor (M.D. physician) and who shall oversee and monitor compliance with the quality care, utilization review and credentialing provisions of the managed care plan.

6. Name, address, and phone number of the case manager who shall be qualified as either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified rehabilitation registered nurse who shall oversee and monitor case management provisions of the managed care plan.

7. Description of the system's organizational structure.

(b) System qualifications.

1. Description and map of the system's service area.

2. Name, address, phone number, and specialty of all participating providers, separately identifying those providers who shall serve as gatekeeper physicians. The list of available gatekeeper physicians shall include an appropriate choice of the different types of physicians described in KRS 342.0011. The system shall provide assurance that all licensing, registration, or certification requirements have been met and are current for the providers to practice in Kentucky (or border states wherein the provider practices) and that each participating provider shall maintain in full force and effect a professional malpractice policy with limits of no less than \$250,000 for an occurrence of professional negligence.

3. A specimen of the agreement that each class of medical provider shall execute to participate in the system.

4. Specimens of the materials which the system shall provide to workers setting forth the grievance procedure and form, the requirements and restrictions of the system, and the means of accessing services and treatment within and outside of the service area. The applicant shall detail the time and means by which the materials shall be delivered to employees and employers.

5. Specimens of materials directed at management employees informing supervisors of the necessity of channeling injured workers to the managed care plan providers and giving immediate notice to the employer, insurance carrier, and plan of the occurrence of an injury.

Section 3. Financial Ability. Each managed health care system shall demonstrate to the commissioner that it has sufficient financial resources and professional expertise to perform all of the necessary functions of a managed health care system and managed care plan. Each managed health care system requesting certification shall demonstrate such resources and ability to the commissioner by the following:

(1) In the event the applicant has previously provided managed care or other similar medical and administrative services in the Commonwealth of Kentucky, the applicant shall provide a summary and description of the administrative and medical services provided, together with a list of representative entities for which managed care related administrative or medical services have been provided; and

(2) In the event the applicant has not previously provided services related to the delivery of managed care in the Commonwealth, the commissioner shall require, prior to certification, that the applicant post either a performance bond or cash surety deposit in an amount of \$500,000 with the office of the commissioner (by use of Form MC-1 or MC-2) to demonstrate sufficient financial resources to provide all of the administrative and medical services required to be performed under a managed care plan. The bond or cash surety shall be released by the commissioner sixty (60) days after the managed health

care system demonstrates to the commissioner that all of its arrangements for rendering workers' compensation managed care services in the Commonwealth have been terminated.

(3) If the applicant has an audited financial statement addressing any of its prior operations for the preceding year, a copy of the applicant's most recent audited financial statement shall be submitted to the commissioner.

Section 4. Plan Qualifications. A copy of the managed care plan shall be submitted, in triplicate, with the application and shall demonstrate:

(1) Assurance of access to quality medical services in a prompt, effective manner for employees of employers using the managed care plan. The plan shall offer an adequate number of health care providers including gatekeeper, specialty and subspecialty physicians, and general and specialty hospitals to afford employees reasonable choice and convenient geographic accessibility to all categories of licensed care. The employee shall choose a gatekeeper physician when it becomes apparent that continuing care is required for an injury or disease compensable under KRS Chapter 342.

(2) That employers or insurers may contract with multiple managed health care systems in order to maximize access for their employees.

(3) That employees may access providers who are not participating plan providers:

(a) For emergency care as defined in Section 1 of this administrative regulation;

(b) When the employee is referred outside the managed care plan for medical services by a gatekeeper physician;

(c) When authorized treatment is unavailable through the managed care plan; or

(d) To obtain a second opinion when a managed care plan physician recommends surgery.

(4) Mechanisms to ensure continuity of care upon termination of contracts between the managed health care system, the employer, and/or participating providers.

(5) Mechanisms for utilization review which shall prevent inappropriate, excessive, or medically unnecessary medical services and including:

(a) Treatment standards upon which utilization review decisions shall be based (including low back symptoms and injuries to the upper extremities and knees) assuring quality care in accordance with prevailing standards in the medical community of which the plan provider is a member. The standards shall conform to any practice parameters or guidelines for clinical practice adopted by the commissioner;

(b) Mechanisms requiring periodic review to determine that continued treatment of an injured employee is reasonable, appropriate, and medically necessary, and that treatment plans required by Section 12 of this administrative regulation have been timely prepared;

(c) Assurance that the managed health care system is conducting ~~[certified or has contracted with a private review agent who is certified to conduct]~~ utilization review in accordance with [pursuant to] the standards set forth in 803 KAR 25:190 [906 KAR 1:080]; and

(d) Adequate procedures for credentialing providers and evaluating the quality and cost effectiveness of services delivered under the plan.

(6) Provisions for employer or carrier audit of the managed health care system's operations and the financial arrangements between the system and its providers.

(7) A grievance procedure meeting the requirements of Section 10 of this administrative regulation.

(8) Effective methods of informing employees, employers, and medical providers of the services provided by the plan and requirements imposed by the plan, including a twenty-four (24) hour toll free phone number by which information may be obtained concerning plan operations, after-office-hours care, and twenty-four (24) hour access to emergency care.

(9) A system to provide authorization numbers to medical providers and health facilities where preauthorization or continued stay review is required by the plan. The authorization numbers shall be recorded in the treatment authorization code section of the appropriate billing forms.

(10) Aggressive case management by either a certified case

manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or a certified rehabilitation registered nurse to coordinate the delivery of health services and return to work policies; promote an appropriate, prompt return to work; and facilitate communication between the employee, employer, and health care providers. The plan shall describe the circumstances under which injured employees shall be subject to case management and the services to be provided.

(11) A notice on Form MC-3 to be mailed to the Department of Workers' Claims for entry into the Department's computer database that indicates the employers who have become associated with a managed care plan.

Section 5. Plan Certification. (1) The commissioner shall notify the applicant in writing of the determination made upon the application for certification or modification thereof, within sixty (60) days of receipt of a complete application.

(2) A certificate shall be valid for a period of two (2) years and only for the service area and managed care plan or plans specified by the commissioner. Upon written request made at least sixty (60) days prior to expiration of the current certificate, the commissioner may recertify a plan for additional successive two (2) year periods. Geographical areas may be added upon the filing of a supplemental application demonstrating the managed health care system's ability to serve the expanded area.

(3) If an application does not meet the requirements for certification or expansion, the commissioner shall notify the applicant in writing and specify those items deemed deficient. The applicant is granted thirty (30) days from the date of notice by the commissioner to correct deficiencies through an amended application.

(4) Certifications of a managed care plan are not transferable. A new application for certification must be filed when fifty (50) percent or more of the ownership or controlling interest of a system has been transferred.

Section 6. Plan Modifications. (1) A managed health care system which either implements or experiences material variations as to any matter set forth in the original application or managed care plan shall obtain approval for the modification by filing a request for modification with the commissioner.

(2) Intended variations shall not be implemented until approved by the commissioner.

(3) A modification outside the control of the system shall be filed with the commissioner within fifteen (15) days of its occurrence.

(4) Within fifteen (15) days of entering into an agreement with an employer or insurer to provide workers' compensation managed care services, the managed health care system shall submit notification thereof to the commissioner. The notification shall identify the employer or employers with whom the managed health care system has contracted and the certified managed care plan applicable to that employer. Notification shall be deemed approved unless disapproved by the commissioner in writing within fifteen (15) days of filing. The system shall promptly furnish any information deemed necessary by the commissioner to review the notice. When an employer or insurer terminates a contract with a managed health care system, the managed health care system shall file notification with the commissioner within fifteen (15) days of the occurrence, indicating the employers for whom managed care services have been terminated and the effective date of the termination.

Section 7. Suspension or Revocation of Certification. (1) The certification of a managed care plan by the commissioner may be suspended or revoked if:

(a) Service is not being provided according to the terms of the certified managed care plan, or in accordance with prevailing treatment standards, or in accordance with treatment standards or practice parameters adopted by the commissioner;

(b) The plan for providing services or the contract with the insurer or health care provider fails to meet the requirements of KRS Chapter 342 or this administrative regulation;

(c) Any material false or misleading information is intentionally submitted by the managed health care system or participating provider to the commissioner, the employer, or the insurer; or

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(d) The managed health care system knowingly or negligently utilizes a health care provider whose license, registration, or certification has been suspended or revoked, or who is otherwise ineligible to provide treatment of the type rendered to an injured employee.

(2) The commissioner may investigate the operations of certified managed health care systems at any time and the system and its providers shall cooperate in any investigation by the commissioner. Should the commissioner believe that grounds for termination or suspension of a managed care plan certification exist, written notice setting forth those grounds shall be mailed to the system. The system is granted fifteen (15) days from the date of the notice in which to file written response. Thereafter, the commissioner shall render a written decision by which the certification of the plan may be terminated, suspended, or conditionally continued to permit the correction of deficiencies directed.

Section 8. Appeal of Commissioner's Action. Any managed health care system may seek review in the Franklin Circuit Court within thirty (30) days of the date of the commissioner's final decision concerning its managed care plan.

Section 9. Coverage. (1) All employees of an employer for whom a managed care plan has been approved by the commissioner shall obtain medical services compensable under KRS Chapter 342 from the certified managed care plan of the employer, except for those injuries or diseases for which continuing treatment was initiated prior to the date the managed care plan for the employer was approved. However, when an employee under continuing care changes the designation of treating physician, the employee's provider choice shall be limited to providers under the certified managed care plan and medical services thereafter shall be obtained pursuant to the managed care plan.

(2) If initial emergency care following a compensable injury is rendered by a medical provider outside the managed health care plan, the injured worker may remain under the care of that provider so long as the provider complies with utilization review, reporting standards, and quality assurance mechanisms prescribed by the employer's managed care plan. Reimbursement of these nonplan providers shall be at the level prescribed by applicable workers' compensation fee schedules.

Section 10. Grievance Procedure. (1) Each workers' compensation managed care plan shall contain an expeditious, informal grievance procedure to resolve disputes by employees and providers relative to the rendition of medical services. A detailed description of the employee grievance procedure shall be included in informational materials provided to employees and a detailed description of the provider grievance procedure shall be included in all provider contracts.

(2) The grievance procedure shall meet the following requirements:

(a) Notice. A grievance is made when a written complaint or written request is delivered by the employee or provider to the managed health care system setting forth the nature of the complaint and remedial action requested.

(b) Time frame to file grievance. The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) Resolution. The managed health care system shall render a written decision upon a grievance within thirty (30) days of receipt by the managed health care system of the grievance.

(d) Arbitration. Managed care plans may provide for alternate means of dispute resolution including arbitration and mediation. In that event final resolution of a grievance shall not be subject to the time constraints set forth in paragraph (c) of this subsection. In all cases, resolution mechanisms shall be expeditious and where treatment matters are at issue reflect the need for prompt resolution.

(3) Record of grievance proceedings. The managed health care system shall maintain records for two (2) years of each formal grievance to include the following:

(a) A description of the grievance; the employee's name and address; names and addresses of the health care providers relevant to the grievance; and the managed health care system's and employer's name and address; and

(b) A description of the managed health care system's findings, conclusions, and disposition of the grievance.

(4) Appeal. Any employee or provider dissatisfied with the managed health care system's resolution of a grievance may apply for review by an administrative law judge by filing a request for resolution within thirty (30) days of the date of the system's final decision. Upon review by an administrative law judge the movant shall be required to prove that the system's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342.

Section 11. Reporting. Each managed health care system having a certified managed care plan shall submit a report to the commissioner annually containing the following information:

(1) Number of employees treated by the managed care plan.

(2) Number of work-related injuries or diseases by ICD-9 code treated under the managed care plan in the preceding year.

(3) Breakdown by ICD-9 codes of injuries and diseases treated.

(4) Total medical costs.

(5) Average medical cost per injured employee by type of injury.

(6) Average medical cost per diseased employee by type of disease.

(7) Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs.

(8) Number of grievances filed, and summary of action taken.

(9) Number of days by type of injury and disease for which an employee has been released from work.

Section 12. Treatment Plans. Those sections of 803 KAR 25:096 concerning treatment plans and use of the Form 113 shall to the extent possible, apply to managed care plans. Each managed health care system shall retain treatment plans and make them available to the employee, employer, Special Fund, Uninsured Employers' Fund, administrative law judges, or attorneys representing any of the parties, upon request.

Section 13. Provider Verification. (1) Each employer which provides medical services through a managed care plan will provide to the injured employee a written certification of workers' compensation managed care coverage as soon as practicable following notice of a compensable injury or disease requiring continuing medical services. The verification shall contain the following information:

(a) Employer name, address, and phone number;

(b) Name and telephone number of the managed health care system to be contacted; and

(c) Employee name and Social Security number.

(2) Possession of such verification is not to be construed as authorization for medical service or payment.

Section 14. Forms. (1) One (1) copy of Forms MC-1, MC-2, and MC-3 is filed herewith and incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - Fourth Floor - The Meyer Building 624 West Main Street, Louisville, Kentucky 40202;

(c) Lexington - 950 National City Plaza, Lexington, Kentucky 40507;

(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.

(3) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: December 5, 2000

FILED WITH LRC: December 6, 2000 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on January 22, 2001, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, 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 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. Written comments must be received prior to 10 a.m. (ET), on January 22, 2001, in order to receive consideration. 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: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 464, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the certification and activities of managed health care systems providing medical services to injured workers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to insure that entities providing medical services to injured workers in the managed care environment are providing such services in accordance with requirements of KRS Chapter 342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.020 provides for the commissioner to promulgate administrative regulations governing provision of medical services by managed health care systems. This administrative regulation sets forth the requirements for departmental certification of managed health care systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of medical benefits by setting forth standards and procedures for managed health care systems.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will drop the requirement that utilization review entities be certified as private review agents pursuant to 906 KAR 1:080 which encompasses KRS 211.461-466.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because of recent legislative changes made in HB 390. Private review agents conducting utilization review are to be certified by the Kentucky Department of Insurance rather than the Cabinet for Health Services. The certification for utilization review providers found in HB 390 applies only to health insurance plans. This regulation is in direct conflict with the statutory provisions and must be amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342.020 provides for the commissioner to promulgate administrative regulations governing provision of medical services by managed health care systems. This amendment eliminates the statutory conflict.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the administration of medical benefits within workers compensation by clarifying requirements for managed health care systems providing medical services to injured workers.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: Employers, injured workers, workers compensation insurance carriers, self-insurance groups, self-insured employers, and workers compensation managed health care systems are affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Managed health care systems will no longer be required to seek separate certification

as private review agents as part of the managed care certification process. Such entities will continue to be required to submit managed care plans which include a description of the utilization review procedures for review prior to certification as a managed health care system.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost associated with implementation.

(b) On a continuing basis: The department is currently staffed with appropriate personnel to review and approve managed health care plans and has been conducting such review since 1995. No additional cost associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Normal budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any fee or increase any fee.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements are applied equally to all managed care providers.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Carrier" is defined by KRS 342.0011(6).

(2) "Commissioner" is defined by KRS 342.0011(9).

(3) "Denial" means a determination by the utilization reviewer that the medical treatment or service under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(4) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(5) "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(6) "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

(7) "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each carrier describing the procedures governing utilization review and medical bill audit activities.

(8) "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Utilization Review and Medical Bill Audit Program. (1)

The utilization review program shall assure that:

- (a) A utilization reviewer is appropriately qualified;
- (b) Treatment rendered to an injured worker is medically necessary and appropriate; and
- (c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

- (a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;
- (b) A medical bill auditor is appropriately qualified; and
- (c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval.

(1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342..

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

~~(4) [Utilization review shall be performed by a private review agent certified by the Kentucky Cabinet for Health Services pursuant to KRS 211.461 to 211.466. A medical bill audit plan shall not require certification by the Kentucky Cabinet for Health Services.~~

(5) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(6) A plan shall be approved for a period of four (4) years, or until December 31, 2000, whichever is later.

(a) At least ninety (90) days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

- 1. Each instance of utilization review;
 - 2. Each instance of medical bill audit;
 - 3. The name of the reviewer;
 - 4. The extent of the review;
 - 5. The conclusions of the reviewer; and
 - 6. The action, if any, taken as the result of the review;
- (b) Be maintained for a period of at least two (2) years; and
- (c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that the acute low back pain practice parameter adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating an applicable low back claim. Additional medical guidelines which may be adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.

Section 5. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim as noncompensable, medical services reasonably related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed \$3000;

(d) The total lost work days cumulatively exceed thirty (30) days; or

(e) An arbitrator or administrative law judge orders a review.

(2) If applicable, utilization review shall commence when the carrier has notice that a claims selection criteria has been met.

(a) The following requirements shall apply if preauthorization has been requested:

1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) working days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional working days.

2. The requested information shall be tendered by the medical provider within ten (10) working days.

3. The initial utilization review decision shall be rendered within two (2) working days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional working days.

2. The requested information shall be tendered by the medical provider within ten (10) working days.

3. The initial utilization review decision shall be rendered within two (2) working days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1). The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within seven (7) days of receipt to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A physician shall issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than ten (10) days from the initiation of the utilization review process;

(b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(c) Contain:

1. A statement of the medical reasons for denial;

2. The name, state of licensure and medical license number of the reviewer; and

3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within fourteen (14) days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written reconsideration decision shall be rendered within ten (10) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:

1. A board eligible or certified physician in the appropriate specialty or subspecialty; or

2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

(b) A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT-RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: December 5, 2000

FILED WITH LRC: December 6, 2000 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on January 22, 2001, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, 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 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. Written comments must be received prior to 10 a.m. (ET), on January 22, 2001, in order to receive consideration. 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: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 464, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the utilization review and medical bill audit activities of insurance carriers, self-insurance groups, self-insured employers, and utilization review and medical bill audit vendors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to insure that entities reviewing the reasonableness and necessity of medical services and fees charged for medical services rendered to injured workers are conducting review of such services in accordance with requirements of KRS Chapter 342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities. This administrative regulation sets forth requirements for departmental approval of utilization review programs and procedures for utilization review.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of utilization review and medical bill auditing within workers compensation by setting forth standards and procedures for the review of reasonableness, necessity, and fees paid for medical treatment delivered to injured workers covered by the Workers Compensation Act.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will eliminate the requirement that utilization review entities be certified as private review agents pursuant to KRS 211.461-466.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary, because of recent legislative changes in HB 390. Private review agents who conduct utilization review shall be certified by the Kentucky Department of Insurance

rather than as previously certified pursuant to KRS 211.461-466 by the Cabinet for Health Services. HB 390 requires certification by the Department of Insurance, but only for utilization review of health insurance plans which exclude workers compensation. This regulation must be amended to remove statutory and regulatory conflicts.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities. This administrative regulation sets forth requirements for Departmental approval of utilization review programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the administration of utilization review within workers compensation by removing conflicting requirements.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: Injured workers, workers compensation insurance carriers, self-insurance groups, self-insured employers, and utilization review entities conducting business within workers compensation are affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Workers compensation insurance carriers, self-insurance groups, self-insured employers, and utilization review entities will no longer be required to seek separate certification as private review agents. Such entities will continue to be required to submit plans for approval to conduct utilization review within workers compensation from the Commissioner of the Department of Workers Claims.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost associated with implementation.

(b) On a continuing basis: The department is currently staffed with appropriate personnel to review and approve utilization review plans and has been conducting such review since 1996. No additional cost associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Normal budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be requirement to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any fee or increase any fee.

(9) TIERING: Is tiering applied? No, tiering is not used, because the administrative regulation is applied equally to all providers of utilization review for workers compensation insurance.

PUBLIC PROTECTION AND REGULATION CABINET
Department for Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 18:030. Group health insurance coordination of benefits.

RELATES TO: KRS 304.17-042, 304.17A.250(9), 304.18-032, 304.18-085, 304.32-145, 304.38-185, 304.43-085 [1986 Ky. Acts ch. 433 secs. 1, 2, 3, and 4]

STATUTORY AUTHORITY: KRS [Chapter 13A], 304.2-110(1), 304.18-085, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: [1986 Ky. Acts ch. 433 secs. 1, 2, 3, and 4 authorize the Commissioner of Insurance to prescribe guidelines for coordination of benefits between group health insurance contracts.] KRS 304.2-110 provides that the commissioner [Commissioner of Insurance] may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.32-250 provides that the Commissioner of Insurance may promulgate reasonable administrative regulations he deems necessary for the proper admini-

stration of KRS 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may promulgate reasonable administrative regulations which he deems necessary for the proper administration of KRS 304.38. This administrative regulation establishes guidelines for coordination of benefits by group health insurance contracts.

Section 1. [Purpose and Scope. (1) Purpose. The purpose of this administrative regulation is to adopt an administrative regulation substantially identical to the Model Group Coordination of Benefits Regulation of the National Association of Insurance Commissioners. This administrative regulation is intended to establish uniformity in the permissive use of overinsurance provisions and to avoid claim delays and misunderstandings that could otherwise result from the use of inconsistent or incompatible provisions among plans:

(2) Coordination of benefits. A coordination of benefits ("COB") provision is one that is intended to avoid claims payment delays and duplication of benefits when a person is covered by two (2) or more plans providing benefits for services for medical, dental, or other care or treatment. It avoids claims payment delays by establishing an order in which plans pay their claims and providing the authority for the orderly transfer of information needed to pay claims promptly. It avoids duplication of benefits by permitting a reduction of the benefits of a plan when, by the rules established by this administrative regulation, it does not have to pay its benefits first.

(3) Coordination permissive. This administrative regulation permits, but does not require, plans to include COB provisions.

(4) Consistency with this administrative regulation. If a group contract includes a COB provision, it must be consistent with this administrative regulation. A plan that does not include such a provision may not take the benefits of another plan (as defined in Section 2 of this administrative regulation) into account when it determines its benefits. An exception to this provision is that a contract holder's coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder.

Section 2. Definitions. (1) "Allowable expense" means a health care service or expense including deductibles, coinsurance or copayments, that is covered in full or in part by any of the plans covering the person.

(2) "Benefit reserve" means the savings recorded by a plan for claims paid for a covered person as a secondary plan rather than as a primary plan.

(3) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

(a) Services including supplies;

(b) Payment for all or a portion of the expenses incurred;

(c) A combination of paragraphs (a) and (b) of this subsection; or

(d) An indemnification.

(4) "Claim determination period" means a period of at least twelve (12) consecutive months, over which allowable expenses shall be compared with total benefits payable in the absence of coordination of benefits, to determine whether overinsurance exists and how much each plan will pay or provide.

(5) "Complying plan" means a plan with benefit determination rules that comply with the requirements of this administrative regulation.

(6) "Coordination of benefits" means a provision establishing an order in which plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(7) "Custodial parent" means the parent awarded custody of a child by a court decree, or with whom the child resides more than one-half (1/2) of the calendar year.

(8) "Insurance contract" means a contract issued by an insurer as defined herein.

(9) "Insurer" is defined in KRS 304.17A-005(22).

(10) "Noncomplying plan" means a plan with no benefit determination rules or whose benefit determination rules do not comply with the requirements of this administrative regulation.

(11) "Plan" means a form of coverage with which coordination of benefits is allowed and health benefit plans as defined in KRS 304.17A-005(17);

(a) "Plan" shall not include the medical benefits coverage in a group, group-type, and individual motor vehicle "no-fault" and traditional automobile "fault" type contracts;

(b) "Plan" may include Medicare benefits pursuant to 42 USC 1395, or other governmental benefits; and

(c) "Plan" shall not include school accident-type coverages. These cover elementary, high school, and college students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis or on a "to-and-from school" basis.

(12) "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if:

(a) The plan either has no order of benefit determination rules, or its rules differ from those permitted by this administrative regulation; or

(b) All plans that cover the person use the order of benefit determination rules required by this administrative regulation, and under those rules the plan determines its benefits first.

(13) "Secondary plan" means a plan that is not a primary plan.

Section 2. [As used in this administrative regulation:

(1) Plan:

(a) A "plan" is a form of coverage with which coordination is allowed. The definition of plan in the group contract must state the types of coverage which will be considered in applying the COB provision of that contract. The right to include a type of coverage is limited by this subsection:

(b) The definition shown in the model COB provision in Section 3 of this administrative regulation is an example of what may be used. Any definition that satisfies this subsection may be used.

(c) This administrative regulation uses the term "plan." However, a group contract may, instead, use the term "program" or other reasonable term:

(d) Except as provided in paragraphs (e) and (f) of this subsection, "plan" shall not include individual or family insurance contracts:

(e) "Plan" may include:

1. Group insurance contracts;

2. Uninsured arrangements of group or group-type coverage; or

3. Group-type contracts: Group-type contracts are contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition of plan, at the option of the insurer or the service provider and its contract client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, "blanket"). The use of payroll deductions by the employee, subscriber, or member to pay for the coverage is not sufficient, of itself, to make an individual contract part of a group-type plan. This description of group-type contracts is not intended to include individually underwritten and issued, guaranteed renewable policies that may be purchased through payroll deduction at a premium savings to the insured. Franchise plan health insurance issued pursuant to KRS 304.17-390 is not a "group-type contract."

(f) "Plan" shall not include the medical benefits coverage in a group, group-type, and individual motor vehicle "no-fault" and traditional automobile "fault" type contracts:

(g) "Plan" may include Medicare or other governmental benefits. That part of the definition of "plan" may be limited to the hospital, medical, and surgical benefits of the government program. However, "plan" shall not include Medicaid and shall not include a plan when, by law, its benefits are excess to those of any private insurance plan or other nongovernmental plan.

(h) "Plan" shall not be construed to include group or group-type hospital indemnity benefits of \$100 per day or less, but may be construed to include the amount by which group or group-type hospital indemnity benefits exceed \$100 per day. "Hospital indemnity benefits" are those not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(i) "Plan" shall not include school accident-type coverages. These cover elementary, high school, and college students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis

or on a "to-and-from school" basis:

(2) "Insurance contract" means a contract issued by an insurer as defined herein:

(3) "Insurer" means an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, a health maintenance organization, or a prepaid dental plan organization:

(4) "This plan," in a COB provision, means the part of the group contract providing the health care benefits to which the COB provision applies and which may be reduced on account of the benefits of other plans. Any other part of the group contract providing health care benefits is separate from "this plan." A group contract may apply one (1) COB provision to certain of its benefits (such as dental benefits), coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits:

(5) "Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if either paragraphs (a) or (b) of this section is true. There may be more than one (1) primary plan (for example, two (2) plans which have no order of benefit determination rules):

(a) The plan either has no order of benefit determination rules, or it has rules which differ from those permitted by this administrative regulation:

(b) All plans which cover the person use the order of benefit determination rules required by this administrative regulation and under those rules the plan determines its benefits first:

(6) "Secondary plan" means a plan which is not a primary plan. If a person is covered by more than one (1) secondary plan, the order of benefit determination rules of this administrative regulation decide the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under the rules of this administrative regulation, has its benefits determined before those of that secondary plan:

(7) "Allowable expense."

(a) "Allowable expense" is the necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition. However, items of expense under coverages such as dental care, vision care, prescription drugs, or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense:

(b) When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid:

(c) The difference between the cost of a private hospital room and the cost of a semiprivate hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary according to generally accepted medical practice:

(d) When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of "allowable expense" must include the corresponding expenses for services to which COB applies:

(8) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of services (including supplies), payment for all or a portion of the expenses incurred, any combination of the foregoing, or an indemnification:

(9) "Claim determination period."

(a) Means the period of time, which must not be less than twelve (12) consecutive months, over which allowable expenses are compared with total benefits payable in the absence of COB, to determine whether overinsurance exists and how much each plan will pay or provide. It usually is a calendar year, but a plan may use some other period of time that fits the coverage of the group contract. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during the claim determination period:

(b) As each claim is submitted, each plan is to determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period, but that determination

nation is subject to adjustment as later allowable expenses are incurred in the same claim determination period.

Section 3. Model COB Contract Provision. (1) General. Section 3 contains a model COB provision for use in group contracts. That use is subject to the provisions of subsections (2) and (3) of this section and to the provisions of Section 4 of this administrative regulation, rules for coordination of benefits.

(2) Flexibility. A group contract's COB provision does not have to use the words and format shown in this administrative regulation. Changes may be made to fit the language and style of the rest of the group contract or reflect to the difference among plans which provide services, which pay benefits for expenses incurred, and which indemnify. Substantive changes are allowed only as set forth in this administrative regulation.

(3) Prohibited coordination and benefit design. A group contract may not reduce benefits on the basis that:

- (a) Another plan exists;
- (b) Except with respect to part B of Medicare, that a person is or could have been covered under another plan;
- (c) A person has elected an option under another plan providing a lower level of benefits than another option which could have been elected; or
- (d) Its benefits are "excess" or "always secondary" to any plan defined in Section 2(1) of this administrative regulation, except in accordance with this administrative regulation.

(4) Text of model COB provision. Coordination of the group contract's benefits with other benefits:

(a) Applicability:

1. This coordination of benefits ("COB") provision applies to this plan when an employee or the employee's covered dependent has health care coverage under more than one (1) plan. "Plan" and "this plan" are defined below.

2. If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:

a. Shall not be reduced when, under the order of benefit determination rules, this plan determines its benefits before another plan; but

b. May be reduced when, under the order of benefit determination rules, another plan determines its benefits first. This reduction is described in paragraph (d) of this subsection, effects on the benefits of this plan:

(b) Definitions:

1. "Plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment:

a. Group insurance for group-type coverage, whether insured or uninsured. This includes prepayment, group practice, or individual practice coverage. It also includes coverage other than school accident-type coverage.

b. Coverage under a governmental plan or required or provided by law. This does not include a state plan under Medicaid (Title XIX, grants to states for medical assistance programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other nongovernmental program.

c. Each contract or other arrangement for coverage under clause a or b of this subparagraph is a separate plan. Also, if an arrangement has two (2) parts and COB rules apply only to one (1) of the two (2), each of the parts is a separate plan.

2. "This plan" is the part of the group contract that provides benefits for health care expenses.

3. "Primary plan/secondary plan." The order of benefit determination rules state whether this plan is a primary plan or a secondary plan as to another plan covering the person.

a. When this plan is a primary plan, its benefits are determined before those of the other plan and without considering the other plan's benefits.

b. When this plan is a secondary plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits.

c. When there are more than two (2) plans covering the person, this plan may be a primary plan as to one (1) or more of the plans and

may be a secondary plan as to a different plan or plans.

4. "Allowable expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one (1) or more plans covering the person for whom the claim is made.

a. The difference between the cost of a private hospital room and the cost of a semiprivate hospital room is not considered an allowable expense under the above definition unless that patient's stay in a private hospital room is medically necessary either according to generally accepted medical practice, or as specifically defined in the plan.

b. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid.

5. "Claim determination period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or any part of a year before the date this COB provision or a similar provision takes effect.

(c) Order of benefit determination rules:

1. General. When there is a basis for a claim under this plan and another plan, this plan is a secondary plan which has benefits determined after those of the other plan, unless:

a. The other plan has rules coordinating benefits with those of this plan; and

b. Both those rules and this plan's rules, in subparagraph 2 of this paragraph, require that this plan's benefits be determined before those of the other plan.

2. Rules. This plan determines its order of benefits using the first of the following rules which applies:

a. Nondependent/dependent. The benefits of this plan which covers the person as an employee, member, or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

b. Dependent child/parents not separated or divorced. Except as stated in clause c of this subparagraph, when this plan and another plan cover the same child as a dependent of different parents, called "parents":

(i) The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

(ii) If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

(iii) However, if the other plan does not have the rule described in subclause (i) of this clause, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

c. Dependent child/separated or divorced parents. If two (2) or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

(i) First, the plan of the parent with custody of the child;

(ii) Then, the plan of the spouse of the parent with the custody of the child; and

(iii) Finally, the plan of the parent not having custody of the child.

(iv) However, if the specific terms of a court decree state that one (1) of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. This subclause does not apply to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has actual knowledge.

d. Active/inactive employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this provision is ignored.

e. Longer/shorter length of coverage. If none of the above rule determines the order of benefits, the benefits of the plan which covered an employee, member, or subscriber longer are determined before those of a plan which covered that person for the shorter time.

(d) Effect on the benefits of this plan:

1. When this paragraph applies. This paragraph (d) applies when, in accordance with paragraph (c) of this subsection, order of benefit determination rules, this plan is a secondary plan as to one or more other plans. In that event, the benefits of this plan may be reduced under this paragraph. Such other plan or plans are referred to as "the other plans" in subparagraph 2 of this paragraph.

2. Reduction in this plan's benefits. The benefits of this plan will be reduced when the sum of:

a. The benefits that would be payable for allowable expenses under this plan in the absence of this GOB provision; and

b. The benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this GOB provision, whether or not claim is made, exceeds those allowable expenses in a claim determination period. In that case, the benefits of this plan will be reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses. When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this plan.

(e) Right to receive and release needed information. Certain facts are needed to apply the GOB rules. (Insurer name) has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. (Insurer name) need not tell, or get the consent of, any person to do this. Each person claiming benefits under this plan must give (insurer name) any facts it needs to pay the claim.

(f) Facility of payment. A payment made under another plan may include an amount which should have been paid under this plan. If it does, (insurer name) may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under this plan. (Insurer name) will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

(g) Right of recovery. If the amount of the payments made by (insurer name) is more than it should have been under this GOB provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid, insurers, or other organizations. The "amount of payments made" includes the reasonable cash value of any benefits provided in the form of services.

Section 4.] Rules for Coordination of Benefits. (1) When a person is covered by two (2) or more plans, the rules for determining the order of benefit payments are as follows: [Order of benefits:]

(a) [General:

1.] The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist;

(b) A plan that does not contain a coordination of benefits provision that is consistent with this administrative regulation is always primary except that coverage obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be considered secondary to the basic package of benefits provided by the contract holder; and

(c) [:

2.] A [secondary] plan may take the benefits of another plan into account only when [under this administrative regulation:] it is secondary to that other plan.

(2) The first of the following rules that describes which plan pays its benefits before another plan is the rule to use:

(a) Nondependent or dependent. The plan that covers the person other than as a dependent is primary and the plan that covers the person as a dependent is secondary unless the person is a Medicare beneficiary, in which case the order of benefits is determined in accordance with 42 USC 1395.

(b) A child, including a newborn subject to KRS 304.17-042 and 304.18-032, covered under more than one (1) plan.

1. The primary plan is the plan of the parent whose birthday is earlier in the year if:

a. The parents are married;

b. The parents are not separated (whether or not they ever have been married); or

c. A court decree awards joint custody without specifying that one

(1) parent has the responsibility to provide health care coverage.

2. If both parents have the same birthday, the plan that has covered either of the parents longer is primary.

3. If a court decree states that one (1) parent is responsible for the child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with financial responsibility has no coverage for the child's health care services or expenses, but that parent's spouse does, the spouse's plan is primary.

4. If the parents are not married or are separated or divorced, and there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parents and the parents' spouses (if any) is:

a. The plan of the custodial parent;

b. The plan of the spouse of the custodial parent;

c. The plan of the noncustodial parent; and then

d. The plan of the spouse of the noncustodial parent.

(c) Active or inactive employee. The plan that covers a person as an employee who is neither laid off nor retired, or as that employee's dependent, is primary.

(d) Continuation coverage. If a person whose coverage is provided under a right of continuation pursuant to federal or state law is also covered under another plan, the plan covering the person as an employee, member, subscriber or retiree, or as that person's dependent, is primary and the continuation coverage is secondary.

(e) Longer or shorter length of coverage. If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is primary:

1. To determine the length of time a person has been covered under a plan, two (2) plans shall be treated as one (1) if the covered person was eligible under the second within twenty-four (24) hours after the first ended;

2. Changes during a coverage period that do not constitute the start of a new plan include:

a. A change in scope of a plan's benefits;

b. A change in the entity that pays, provides or administers the plan's benefits; or

c. A change from one (1) type of plan to another.

3. The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding rules determines the primary plan, the allowable expenses shall be shared equally between the plans.

[(b) Dependent child/parents not separated or divorced. The word "birthday" in the wording shown in Section 3(4)(c) of this administrative regulation refers only to month and day in a calendar year, not the year in which the person was born.

(c) Longer/shorter length of coverage:

1. To determine the length of time a person has been covered under a plan, two (2) plans shall be treated as one (1) if the claimant was eligible under the second within twenty-four (24) hours after the first ended. Thus, the start of a new plan does not include a change in the amount or scope of a plan's benefits, a change in the entity which pays, provides, or administers the plan's benefits, or a change from one type of plan to another (such as, from a single employer plan to that of a multiple employer plan).

2. The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

(2) Reduction in a plan's benefits when it is secondary:

(a) General. A secondary plan may reduce its benefits by using alternatives 1, 2, or 3 below, or any version thereof which is more favorable to a covered person. This is subject to the conditions and limits described in this subsection.

(b) Alternative 1. Total allowable expenses:

1. When this alternative is used, a secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a

claim-determination period are not more than total allowable expenses. The amount by which the secondary plan's benefits have been reduced shall be used by the secondary plan to pay allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims which have been submitted up to that point in time during the claim-determination period.

2. When this alternative is used, the suggested contract provision is as shown in Section 3(4)(d)2 of this administrative regulation.

3. The last paragraph quoted in Section 3(4)(d)2 of this administrative regulation may be omitted if the plan provides only one (1) benefit, or may be altered to suit the coverage provided.

(c) Alternative 2. Total allowable expenses with coinsurance.

1. When this alternative is used, a secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a claim-determination period are not more than a stated percentage, but not less than eighty (80) percent, of total allowable expenses. The amount by which the secondary plan's benefits have been reduced shall be used by the secondary plan to pay the stated percentage of allowable expenses, not otherwise paid, which were incurred during the claim-determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for the stated percentage of allowable expenses paid on all claims which were submitted up to that point in time during the claim-determination period.

2. When this alternative is used, the suggested contract provision for use in Section 3(4)(d)2 of this administrative regulation is shown below:

"2. Reduction in this plan's benefits. The benefits of this plan will be reduced when the sum of:

a. The benefits that would be payable for the allowable expenses under this plan in the absence of this COB provision; and

b. The benefits that would be payable for the allowable expenses under the other plans in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made, exceeds the greater of 80% of those allowable expenses or the amount of benefits in a above. In that case, the benefits of this plan will be reduced so that they and the benefits in b above do not total more than that greater of 80% of those allowable expenses or the amount of benefits in a above. When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this plan."

3. The last paragraph of 2, quoted immediately above, may be omitted if the plan provides only one (1) benefit, or may be altered to suit the coverage provided.

(d) Alternative 3. Maintenance of benefits.

1. When this alternative is used, a secondary plan may reduce its benefits by the amount of the benefits payable under the other plans for the same expenses.

2. When this alternative is used, the suggested contract provision for use in Section 3(4)(d)2 of this administrative regulation is shown below:

"2. Reduction in this plan's benefits. The benefits that would be payable under this plan in the absence of this COB provision will be reduced by the benefits payable under the other plans for the expenses covered in whole or in part under this plan. This applies whether or not claim is made under a plan. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an expense incurred and a benefit payable. When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this plan."

3. The last paragraph of 2, quoted immediately above, may be omitted if the plan provides only one (1) benefit, or may be altered to suit the coverage provided.

4. This alternative 3 may be used in a plan only when, in the absence of COB, the benefits of the plan (excluding benefits for dental care, (except prepaid dental plan organizations) vision care, prescription drugs or hearing aid programs) will, after any deductible, be:

a. Not less than fifty (50) percent of covered expenses;

(i) For the treatment of mental or nervous disorders or alcoholism

or drug abuse; or

(ii) Under cost containment provisions with alternative benefits, such as those applicable to second surgical opinions, precertification of hospital stays, etc.; and

b. Not less than seventy-five (75) percent of other covered expenses;

5. A plan using this alternative 3 may exclude definitions of and references to allowable expenses, claim-determination period, or both.

(e) Conditions for use of alternatives 2 and 3:

1. General. Alternatives 2 and 3 permit a secondary plan to reduce its benefits so that total benefits may be less than 100 percent of allowable expenses.

2. Conditions. A plan using alternatives 2 or 3 must comply with the following conditions:

a. Notice. The plan must provide prior notice to employees or members that when it is secondary (that is, it determines benefits after another plan):

(i) Its benefits plus those of the primary plan will be less than 100 percent of allowable expenses; unless:

(ii) The primary plan, by itself, provides benefits at 100 percent of allowable expenses.

b. Copayment and deductible limit. When the plan is secondary, it must provide a limit on the amount the employee, member, or subscriber is required to pay toward the expenses or services covered under the plan and for which the plan is secondary. Such limit shall not exceed \$2,000 for any covered person, or \$3,000 for any family, in any claim-determination period.

c. Unrestricted enrollment. The plan must permit a person to be enrolled for its health care coverage when that person's eligibility for health care coverage under another plan ends for any reason, if:

(i) Such a person is eligible for coverage under the plan; and
(ii) Such enrollment is made before the end of the thirty-one (31) day period immediately following either:

i. The date when health care coverage under the other plan ends; or

ii. The end of any continuation period elected by or for that person. This unrestricted enrollment is not required if a person remains eligible for coverage under that other plan, or a plan which replaces it, without interruption of that person's coverage.

d. Enrollment requirements. If a person is enrolled before the end of the period, described in clause c(ii) of this subparagraph, there shall be no interruption of coverage. Thus, the requirements concerning active work of employees, members, or subscribers, or nonconfinements of dependents on the effective date of coverage, shall not be applied. However, coverage for the person under the plan may be subject to the same requirements, including underwriting requirements, benefit restrictions, waiting periods, and preexisting condition limitations that would have been applied had the person been enrolled under the plan on the later of:

(i) The date the person first became eligible for the plan's coverage; or

(ii) The date the employee, member or subscriber last became covered under the plan. Credit shall be given under any preexisting condition limitation or waiting period from the later of the dates described in subclause (i) or (ii) of this clause to the date the person actually enrolled pursuant to clause c of this subparagraph.

(3) Reasonable cash value of services. A secondary plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

(4) Excess and other nonconforming provisions.

(a) Some plans have order of benefit determination rules not consistent with this administrative regulation which declare that the plan's coverage is "excess" to all others, or "always secondary." This occurs because certain plans may not be subject to insurance administrative regulations or some group contracts have not yet been conformed to this administrative regulation pursuant to Section 6, effective date; existing contracts.

(b) A plan with order of benefit determination rules which comply

with this administrative regulation ("complying plan") may coordinate benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those in this administrative regulation ("noncomplying plan") on the following basis:

1. If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis.

2. If the complying plan is the secondary plan, it shall, nevertheless, pay or provide its benefits first, but the amount of benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, such payment shall be the limit of the complying plan's liability.

3. If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. However, the complying plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the noncomplying plan.

4. If:

a. The noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan; and

b. Governing state law allows the right of subrogation set forth below; then the complying plan shall advance to or on behalf of the employee, subscriber, or member an amount equal to such difference. However, in no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid. In consideration of such advance, the complying plan shall be subrogated to all rights of the employee, subscriber, or member against a noncomplying plan. Such advance by the complying plan shall also be without prejudice to any claim it may have against the noncomplying plan in the absence of such subrogation.

(5) Allowable expense. A term such as "usual and customary," "usual and prevailing," or "reasonable and customary" may be substituted for the term "necessary, reasonable, and customary." Such terms as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the GOB provisions apply.

(6) Subrogation. The GOB concept clearly differs from that of subrogation. Provisions for one may be included in group health contracts without compelling the inclusion or exclusion of the other.]

Section 3. Procedure to be Followed by Secondary Plan. (1) A secondary plan shall reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than 100 percent of total allowable expenses.

(a) The secondary plan shall calculate its savings by subtracting the amount that it paid as a secondary plan from the amount it would have paid had it been primary and any savings shall be:

1. Recorded as a benefit reserve for the covered person; and

2. Used by the secondary plan to pay any allowable expenses, not otherwise paid, that are incurred by the covered person during the claim determination period.

(b) By the end of the claim determination period, the secondary plan shall:

1. Determine whether a benefit reserve has been recorded for the covered person;

2. Determine whether there are any unpaid allowable expenses for that claims determination period; and

3. Pay any unpaid allowable expenses for that claim determination period.

(c) The secondary plan shall use the covered person's recorded benefit reserve, if any, to pay up to 100 percent of total allowable expenses incurred during the claim determination period, at the end of which:

1. The benefit reserve shall return to zero; and

2. A new benefit reserve shall be created for each new claim determination period.

(2) The benefits of the secondary plan shall be reduced when the

sum of the benefits payable under the secondary plan, in the absence of this coordination of benefits provision, and the benefits that would be payable under the other plans, in the absence of a coordination of benefits provision, whether or not a claim is made, exceeds the allowable expenses in a claim determination period, with a reduction of benefits as follows:

(a) The benefits of the secondary plan shall be reduced so that they and the benefits payable under the other plans do not total more than the allowable expenses; and

(b) Each benefit is reduced in proportion and charged against any applicable benefit limit of the plan.

(3) If a person is covered by more than one secondary plan, the order of benefit determination rules of this administrative regulation decide the order in which secondary plans benefits are determined in relation to each other. Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under the rules of this administrative regulation, has its benefits determined before those of that secondary plan.

Section 4. Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one (1) health benefit plan, you should file all your claims with each plan."

Section 5. Miscellaneous Provisions. (1) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan.

(2) A plan with order of benefit determination rules that comply with this administrative regulation may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules that do not comply with those contained in this administrative regulation on the following basis:

(a) If the complying plan is the primary plan, it shall pay or provide its benefits first;

(b) If the complying plan is the secondary plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, the payment shall be the limit of the complying plan's liability; and

(c) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If, within two (2) years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.

(3) If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than he would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to or on behalf of the covered person an amount equal to the difference.

(4) In no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service, and:

(a) In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan; and

(b) The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(5) Coordination of benefits differs from subrogation. Provisions for one (1) may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(6) If the plans cannot agree on the order of benefits within thirty (30) calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that no plan shall be required to pay more than it would have

paid had it been primary.

Section 6. [5.] Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

[Section 6. Effective Date; Existing Contracts. This administrative regulation applies to group health contracts delivered, issued for delivery, or renewed on or after January 1, 1987.]

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: November 20, 2000

FILED WITH LRC: November 20, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001, at 9 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlette Kay Hummel, Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for coordination of benefits by health insurance contracts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because it establishes a uniform system of coordinating benefits to be used by all health insurance contracts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes in that by establishing guidelines for coordination of benefits by health insurance contracts, it aids in the uniform administration of the Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes in that by establishing guidelines for coordination of benefits by group health insurance contracts, it aids in the uniform administration of the Insurance Code.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: An insurer that is considered to be secondary will be required to utilize a benefit reserve methodology when an enrollee has coverage with more than one insurer. Based on the amount calculated in the benefit reserve, the secondary insurer will pay claims not covered by the primary insurer.

(b) The necessity of the amendment to this administrative regulation: Updates the regulation to conform with the National Association of Insurance Commissioners' current model regulation concerning COB upon which the regulation was based. Provides uniform and consistent guidelines in administering COB for health insurers.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the regulation to conform with the National Association of Insurance Commissioners' current model regulation concerning

COB upon which the regulation was based. Provides uniform and consistent guidelines in administering COB for health insurers.

(d) How the amendment will assist in the effective administration of the statutes: Updates the regulation to conform with the National Association of Insurance Commissioners' current model regulation concerning COB upon which the regulation was based. Provides uniform and consistent guidelines in administering COB for health insurers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all 40 health insurers currently issuing health insurance contracts in Kentucky.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: An insurer that is considered to be secondary will be required to utilize a benefit reserve methodology when an enrollee has coverage with more than one insurer. Based on the amount calculated in the benefit reserve, the secondary insurer will pay claims not covered by the primary insurer.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance will use its existing budget to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not used because this administrative regulation applies to all health insurers issuing group health insurance contracts in Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS Chapters 198B, 318

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The department is directed by] KRS 318.130 requires the department, after review by the [through the] State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky [adopt and put into effect a] State Plumbing Code regulating plumbing, including the quality and weight of material. This administrative regulation identifies and publishes the manufacturer's specification number [numbers] for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use. [This amendment is necessary to correct references to various standards to be used in the installation of plumbing systems; delete obsolete language relative to the regulation of subsoil drainage systems which are no longer under the jurisdiction of the department; and removes all references to allowing lead in water distribution piping which has been prohibited for years.]~~

Section 1. Definition of Terms. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(3) "ASTM" means American Society for Testing and Materials and copies of specifications identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(4) "Drain pipe" means any pipe which carries wastewater or wa-

terborne wastes in a building drainage system.

(5) "Drainage System" means all the piping within a public or private premises which conveys sewage, rain water or other liquid wastes to a point of disposal. The drainage system [H] does not include the mains of a public sewer system [systems] or a private or public sewage treatment or disposal plant.

(6) "DWV pipe" means [an abbreviated term for] drain, waste and vent piping, including aluminum, as used in common plumbing practice.

(7) "Lead" means solders and flux containing more than two-tenths (0.2) percent lead and pipes and pipe fittings containing more than eight (8.0) percent lead.

(8) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

(9) [(8)] "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Public Health Service Drinking Water Standards or the administrative regulations of the public health authority having jurisdiction.

(10) [(9)] "PVC" means polyvinyl chloride.

(11) [(10)] "Stack" means any vertical line of soil, waste, vent, or inside conductor piping, except vertical vent branches which do not extend through the roof and which pass through less than two (2) stories before being reconnected to a vent stack or stack vent.

(12) [(11)] "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater.

(13) [(12)] "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system, or to provide a circulation of air within the system to protect trap seals from siphonage and back pressure.

(14) [(13)] "Waste pipe" means a pipe which conveys only waste.

Section 2. Materials, Quality of. The material [materials] used in a drainage or plumbing system or part of a system shall be free of defects.

Section 3. Label, Cast or Stamped. Each length of pipe, fitting, trap, fixture and device used in a plumbing or drainage system shall be stamped or indelibly marked with:

(1) The weight or quality; and

(2) [with] The maker's mark or name (manufacturer's specification number).

Section 4. Vitrified clay pipe, concrete pipe, truss pipe and extra heavy SDR 35 sewer piping shall be produced and labeled and used only as follows:

(1) Vitrified clay pipe, ASTM C-200.

(2) Concrete pipe, ASTM C-14.

(3) Truss pipe, ASTM D-2680-74. Solid wall truss pipe, ASTM D-2751-74.)

(4) Extra heavy SDR 35 sewer piping, ASTM D-3033-74 and D-3034-74.

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall be produced and labeled as ASTM A74-82.

(2) Service-weight. Service-weight cast-iron pipe and fittings shall be produced and labeled as ASTM A74-82.

(3) Coating. Cast-iron pipe and fittings for underground use shall be coated;

(a) With asphaltum;

(b) Coal tar pitch; or

(c) [using] A coating produced and labeled as ASTM A-174.

Section 6. Wrought-iron Pipe. All wrought-iron pipe shall be produced and labeled with the latest ASTM "specifications for welded wrought iron pipe."

Section 7. Mild-steel Pipe. Steel pipe shall be produced and labeled with the latest ASTM "specifications for welded and seamless steel pipe."

Section 8. Brass pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe and brass tubing shall be produced and labeled with the latest specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes."

Section 9. Aluminum Drain, Waste and Vent (DWV) Pipe with End Cap Components. Aluminum drain, waste and vent pipe with end cap adapters shall be produced and labeled as ASSE Specification No. 1045.

Section 10. Borosilicate Pipe, Plastic Pipe, Stainless Steel Tubing, Polyethylene Pipe and Polypropylene Pipe. (1) Borosilicate pipe. Borosilicate pipe shall be produced and labeled with the latest ASTM specifications.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be:

(a) Schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride produced and labeled as ASTM D 1784-75; or

(b) Cellular core PVC produced and labeled ASTM F-891; or

(c) Schedule 40 or 80 acrylonitrile-butadiene-styrene produced and labeled as ASTM D 1788-73; or

(d) Cellular core ABS produced and labeled as ASTM F-628.

(3) Pipe and fittings shall be produced and labeled in accordance with the provisions of ASTM-D-2665-76, as amended, for PVC and ASTM-D-2661-90 for ABS, and both shall bear the National Sanitation Foundation seal of approval.

(4) Copies of National Sanitation Foundation specifications for the manufacturer of products identified in this administrative regulation may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106.

(5) All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification and the size.

(6) The use of plastic pipe and fittings (PVC or ABS) [as outlined here] shall be restricted to buildings if the soil or waste and vent stack do not exceed forty-five (45) feet in height, beginning at the floor or slab in which the soil or waste and vent stack first penetrates the floor or slab and through the vertical distance [the vertical distance from the base of the stack] to its terminus through the roof of the building.

(7) [(3)] Stainless steel tubing.

(a) Stainless steel tubing for hot and cold water piping shall be Grade H produced and labeled as ASTM A268-68.

(b) Stainless steel tubing for the soil, waste and vent system shall be either Grade G or H produced and labeled as ASTM A-268-68.

(8) [(4)] Polyethylene pipe. Polyethylene pipe used in acid waste systems shall be produced and labeled as ASTM D-1204-62T.

(9) [(5)] Polypropylene pipe. Polypropylene pipe used in acid waste systems shall be produced and labeled as ASTM D-2146-65T or ASTM F-1412.

Section 11. Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipe [pipes] shall be produced and labeled as Federal Specifications WW-P-325, and shall not be lighter than the following weights:

| Size Inside Diameter Inches | Commercial Designation "D" or "XL" | | Wall Thickness Inches | Weight Pounds | Per Foot Ounces |
|-----------------------------|------------------------------------|----|-----------------------|---------------|-----------------|
| 1 1/2 | D | XL | 0.138 | 3 | 8 |
| 2 | D | XL | 0.142 | 4 | 12 |
| 3 | D | XL | 0.125 | 6 | 0 |
| 4 | D | XL | 0.125 | 8 | 0 |

(2) Lead bends and lead traps. All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness.

Section 12. Integral flashing. If a [On] roofing system requires [systems requiring] integral flashing [flashings], a flashing material which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system,

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

shall be used.

Section 13. Sheet Lead. Sheet lead for a shower pan [pans] shall not weigh less than four (4) lbs. per sq. ft. and shall not weigh less than two and one-half (2 1/2) [three-(3)] lbs. per sq. ft. for vent pipe flashings.

Section 14. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 15. Threaded Fittings. (1) A plain screw fitting [Plain screwed-fittings] shall be either cast-iron, malleable iron, or brass of standard weight and dimension [dimensions].

(2) A drainage fitting [Drainage-fittings] shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) A cast-iron fitting [Cast-iron-fittings] used in a water supply distribution shall be galvanized.

(4) A malleable iron fitting [Malleable-iron-fittings] shall be galvanized.

Section 16. Caulking Ferrules. A caulking ferrule [Caulking-ferrules] shall be of red brass and shall be in accordance with the following table:

| Pipe Sizes Inches | Inside Diameter Inches | Length Inches | Minimum Weight Each |
|----------------------|---------------------------|------------------|------------------------|
| 2 | 2 1/4 | 2 1/2 | 1 lb. 0 oz. |
| 3 | 3 1/4 | 4 1/2 | 1 lb. 12 oz. |
| 4 | 4 1/4 | 4 1/2 | 2 lb. 8 oz. |

Section 17. Soldering Nipples. A soldering nipple [Soldering-nipples] shall be recessed red cast brass, iron pipe size. If [When] cast, they shall be full bore and of minimum weight.

Section 18. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. (1) A floor flange [Floor-flanges] shall either be:

- (a) Hard lead;
- (b) Brass;
- (c) Cast iron;
- (d) Galvanized malleable iron;
- (e) ABS; or
- (f) PVC.

(2) A hard lead or [and] brass flange [flanges] shall not be less than one-eighth (1/8) inch thick.

(3) Cast iron or [and] galvanized malleable iron shall be:

- (a) Not [be] less than one-fourth (1/4) inch thick; and
- (b) [shall] Have a two (2) inch caulking depth.

Section 19. Use of Lead. ~~Lead shall not be used [The use of lead (defined as solders and flux containing more than two-tenths (0.2) percent lead, and pipes and pipe fittings containing more than eight (8.0) percent lead]] in the installation or repair of a public or private water system providing potable water for human consumption [shall not be used].~~

Section 20. New Materials. (1) Materials other than those specified in this administrative regulation shall be prohibited unless the material is specifically approved by the State Plumbing Code Committee and the Department of Housing, Buildings and Construction as being equal to or better than the material specified in the State Plumbing Code.

(2) It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove to the satisfaction of these agencies that the material is equal to or better than the material which it is intended to replace.

(3) Procedural requirements for approval of new parts and materials are set forth in 815 KAR 20:020.

FRANK PHIEFFER, Chairman

DENNIS J. LANGFORD, Commissioner

RONALD MCCLOUD, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001 at 10 a.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 January 12, 2001, (five workdays prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: 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) 564-3833.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Judith G. Walden

(1) Provide a brief summary of:

(a) What this administrative regulation does: Identifies and publishes the manufacturer's specification number for the quality and weight of material to be used in plumbing installations.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative regulation: To accept the use of a previously approved material that is now produced to a more recent standard.

(b) The necessity of the amendment to this administrative regulation: To provide a specific point to begin the 45' height limitation. The depth of a stack below a floor or slab is often undeterminable from a set of construction plans but the height above the slab is easily determined. This amendment also provides a more consistent means of determining whether plastic pipe can be used or if metallic pipe is required in the soil, waste and vent system.

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed master and journeyman plumbers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Would mean great savings on the few projects that this change would affect.

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Explain why tiering was or was not used. This amendment is concerned with clarification of lead definition and KRS Chapter 13A changes.

PART 2
OF THE
JANUARY 1, 2001
ADMINISTRATIVE REGISTER

Due to the size of the January 1, 2001, Administrative Register, it could not be stapled as one document, but is included in two separate stapled documents. This section is Part 2 of the January 1, 2001 Administrative Register.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Amendment)**

815 KAR 20:090. Soil, waste and vent systems.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for soil, waste, and vent systems. This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system. This amendment is necessary to provide for the addition of future plumbing fixtures without the cost of breaking up concrete, and to adjust the code requirements to reflect the reduction in water usage. (See Sections 6(2) and 7 of this administrative regulation.)

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) A stack shall be supported at its base and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of each vertical stack and at each trap branch as close to the trap as possible.

(5) Polyethylene pipe and fittings must be continuously supported with a V channel.

(6) A stack shall be rigidly supported at its base and at the floor level.

Section 2. Change in Direction. A change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend, except that a single sanitary tee may be used in a vertical stack, or a sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees. A double sanitary tee may be used on a vertical soil, waste and vent line.

Section 3. Prohibited Fittings. A double hub bend and double hub tee or inverted hub shall not be used on a sewer, soil or waste line. The drilling and tapping of a house sewer or house drain, soil, waste or vent pipe, and the use of a saddle hub and band shall be prohibited. A pipe shall be installed without a hub or restriction that reduces the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, a dead end shall not be used without special permission from the department.

Section 5. Protection of Material. A pipe passing under or through a wall shall be protected from breakage. A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing produced and labeled as ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as ASTM B-

587-73, seamless stainless steel tubing, Grade G or H produced and labeled as ASTM A-312, polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2665-76, D-1784-75 and F-891, coextruded composite PVC pipe produced and labeled ASTM F-1488, acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2661-90, D-1788-73 or F-628, silicon iron or borosilicate.

(2) A main or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, No-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section. Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

| Pipe Size (Inches) | Maximum Developed Length | Fixture Units |
|--------------------|--------------------------|---------------|
| 1 1/4 | 25 ft. | 1 |
| 1 1/2 | 60 ft. | 2 |
| 2 | 80 ft. | 6 |
| 2 1/2 | 100 ft. | 12 |
| 3 | 225 ft. | 36 |
| 4 | | 172 |
| 5 | | 342 |
| 6 | | 576 |
| 8 | | 1600 |
| 10 | | 2900 |
| 12 | | 4600 |

A water closet shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil, and Vent Stacks. A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof. A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns. The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. A soil and waste stack or branch shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be either a cast iron, lead, brass, copper, or plastic closet bend. A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building if the soil, waste and vent piping is not extended undiminished through the roof or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for

new work.

Section 13. Prohibited Connections. A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture. A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof. A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. A fixture trap shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. A crown vent shall not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed. A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

| Size of Fixture Drain (In Inches) | Distance Trap to Vent |
|--------------------------------------|--------------------------|
| 1 1/4 | 2 ft. 6 in. |
| 1 1/2 | 3 ft. 6 in. |
| 2 | 5 ft. |
| 3 | 6 ft. |
| 4 | 10 ft. |

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. All main vents or vent stacks shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. If it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base; except that, if the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base.

Section 21. Vents; Required Sizes. (1) The required size of a vent

or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

| MAXIMUM PERMISSIBLE LENGTHS OF VENTS | | |
|--------------------------------------|-----------------------------|------------------|
| Pipe Size (In Inches) | Maximum Length (In Feet) | Fixture Units |
| 1 1/4 | 30 | 2 |
| 1 1/2 | 150 | 10 |
| 2 | 200 | 24 |
| 2 1/2 | 250 | 36 |
| 3 | 300 | 72 |
| 4 | 400 | 240 |
| 5 | 800 | 720 |

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. A vent shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet. A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. If two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with this administrative regulation.

Section 26. Floor Drain Individual Vent not Required. A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack. An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility which discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. A house drain shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation. The connection shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. A bar and soda fountain waste, sink or receptacle shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building. A food storage compartment drain shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line. A floor receptor or floor sink installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

Section 32. Refrigerator Wastes. A refrigerator waste pipe shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. A corrosive liquid shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if a pit has a ventilated cover.

(3) If under certain conditions a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) A fixture connection shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink and two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra heavy salt glazed vitrified pipe, silicon iron, lead, polyethylene pipe and fittings produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, polypropylene pipe and fittings produced and labeled as ASTM F-

1412, or other materials approved by the department. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. A flat or wet vent serving a plumbing fixture shall be constructed with special permission from the department if a plumbing system is being remodeled or if an addition is added to an original system; except that a flat vent in new construction may also be allowed in a commercial building if the design of the building prohibits the type of venting required by this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

(2) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap and venting provisions of the State Plumbing Code.

FRANK PHIEFFER, Chairman
DENNIS J. LANGFORD, Commissioner
RONALD MCCLOUD, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001 at 10 a.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 January 12, 2001, (five workdays prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: 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) 564-3833.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Judith G. Walden

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for installation of a soil, waste and vent system, including a list of acceptable materials to be used.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of-

(a) How the amendment will change this existing administrative regulation: To accept the use of a previously approved material that is now produced to a more recent standard.

(b) The necessity of the amendment to this administrative regulation: To accept the use of a previously approved material that is now produced to a more recent standard.

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed master and journeyman plumbers and users of the State Plumbing Code.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(5) Provide an estimate of how much it will cost to implement this administrative regulation: Not applicable

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees will be increased with the implementation of this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be increased with the implementation of this amendment.

(9) TIERING: Is tiering applied? No. Explain why tiering was or was not used. This administrative regulation merely adds new types of piping as approved materials.

CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(Amendment)

900 KAR 6:050. Certificate of need administrative regulation.

RELATES TO: KRS 216B.010 to 216B.130, 216B.330 to 216B.339, 216B.455, 216B.990, 2000 Ky. Acts ch. 549, Part IX 26.a.

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is required by statute to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary. HB 452 directs the cabinet to promulgate administrative regulations regarding continuing care retirement communities. This administrative regulation carries out the legislative directive contained in HB 452 and further establishes requirements for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter published by the cabinet regarding certificate of need matters.

(4) "Days" means calendar days.

(5) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(6) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a citizen of the Commonwealth.

(7) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.

(8) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(9) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(10) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, personal care beds, and Alzheimer nursing home ~~[disease facility]~~ beds.

(11) "Nonsubstantive review" means an expedited review of an application for certificate of need which has been granted nonsubstantive review status pursuant to the provisions of KRS 216B.095 and this administrative regulation.

(12) "Owner" means a person as defined in KRS 216B.015(16) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(13) "Proposed service area" means the geographic area the applicant proposes to serve.

(14) "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(15) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(16) "Show cause hearing" means a hearing before the cabinet at which a person is required to explain or demonstrate why that [the] person is not required to obtain a certificate of need or is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of such receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until such time as the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 3 of this administrative regulation.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete may be amended at a public hearing to:

(a) Decrease the scope of the project;

- (b) Decrease the amount of the capital expenditure; or
- (c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:

(a) The location is within the county listed on the certificate of need application; and

(b) The applicant files a written request with the cabinet within thirty (30) days of the date of approval. A request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within a year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 8 of this administrative regulation shall be as follows:

(a) Public notice for organ transplantation, magnetic resonance imaging, [lithotripter,] megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

- 1. January; and
- 2. July.

(b) Public notice for hospice and home health agencies shall be given on the third Thursday of the following months:

- 1. February; and
- 2. August.

(c) Public notice for ground ambulance providers, mobile services and rehabilitation agencies, shall be given on the third Thursday of the following months:

- 1. March; and
- 2. September.

(d) Public notice for day health care programs and personal care beds shall be given on the third Thursday of the following months:

- 1. April; and
- 2. October.

(e) Public notice for hospital, psychiatric, comprehensive physical rehabilitation, chemical dependency facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

- 1. May; and
- 2. November.

(f) Public notice for long-term care beds shall be given on the third Thursday of June.

(g) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:

- 1. June; and
- 2. December.

(h) A proposal not included in paragraphs (a) through (g) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

(3) Applications filed prior to the effective date of the amended administrative regulation may be placed on public notice according to the Timetable for Submission of Applications in the administrative regulation in effect at the time the application was filed.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for

certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Fifteen (15) days after [prior to] the deadline for filing [deeming] an application in [complete for] the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review granted pursuant to Section 8 of this administrative regulation. Applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(6) A determination that an application is complete shall:

(a) Indicate that the applicant has minimally responded to the necessary items on the application;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) [ten (10)] days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(8) If, upon the receipt of the additional information, the cabinet finds that the application is complete, the cabinet shall, for applicants proceeding under formal review:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a

certificate of need has begun.

(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

2. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(10) If the application, or if the information submitted, is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty (20) ~~[twenty-five (25)]~~ days prior to the date that the deferred application is placed on public notice.

(12) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) Whether the proposal is consistent with the current State Health Plan established in 902 KAR 17:041.

1. Applications proposing to relocate surgical services from one (1) licensed health facility to a newly established or other health facility and either facility is owned by the existing facility with surgical services shall be considered consistent with the State Health Plan if the existing facility has not added to its complement of operating rooms within twelve (12) months prior to filing the application for relocation and the following conditions are met:

a. The newly established surgical services are located:

(i) On the existing facility's licensed premises; or

(ii) In the same county as the existing health facility and where there are no other licensed providers of surgical services in the county; and

b. The existing facility with surgical services which relocated the rooms and the newly established surgical service shall not add operating rooms for one (1) year following the date that the newly established surgical services commence operations.

2. An application by an acute care hospital to convert acute care beds to psychiatric beds shall be consistent with the state health plan if the following conditions are met:

a. The occupancy of acute care beds in the applicant's facility is less than seventy (70) percent in the latest published utilization report;

b. All of the proposed psychiatric care beds are being converted from licensed acute care beds;

c. All of the psychiatric care beds will be converted and implemented on site at the applicant's existing licensed acute care facility;

d. All of the converted psychiatric care beds shall be dedicated exclusively to the treatment of geriatric patients, aged sixty-five (65) or older;

e. The hospital shall establish distinct admission and discharge criteria for admitting only those patients who have both mental and physical conditions who would be excluded from treatment in a regular adult psychiatric unit;

f. The staff of the unit shall include a multidisciplinary team of specialists involving psychiatry and internal medicine with specialization in the treatment of geriatrics and nursing personnel specially trained in psychiatric and medical geriatric patient care;

g. The number of beds to be converted shall be based on the population age sixty-five (65) plus in the counties proposed to be served; and

h. The applicant agrees in writing not to seek Medicaid certification for the beds converted.

3. Applications proposing to add acute care beds shall be consistent with the State Health Plan if the following conditions are met:

a. The applicant shall document that utilization at its facility has reached functional capacity. In calculating functional capacity, consideration shall be given to factors such as the mix of private and semi-private rooms, patient matching limitations such as gender or the need for isolation beds required to address emergency patient needs, and limits created by special purpose acute units, such as obstetrics;

b. The applicant shall document that the transfer of beds from special purpose acute units is not feasible because occupancy is greater than 65 percent or, if the occupancy is less than sixty-five (65) percent, the transfer of underutilized beds is not sufficient to meet the hospital's total additional acute care bed need;

c. The applicant shall document an overall acute care occupancy rate in the county of sixty-five (65) percent or greater for the twelve (12) prior months;

d. The applicant shall document that:

(i) A new service established in the last eight (8) years has resulted in increasing the number of inpatient days at the hospital by more than three (3) percent; or

(ii) A three (3) percent or greater increase in inpatient volume has occurred from out-of-state admissions; and

e. The maximum number of acute care beds that may be approved shall be based on volume projected five (5) years from the CON filing. Approval shall be based on the higher of:

(i) The applicant's credible forecast of future utilization; or

(ii) A regression analysis projection of patient day trends over a five (5) year time frame.

4. An application proposing to convert either psychiatric or chemical dependency beds, or both psychiatric and chemical dependency beds, to acute care shall be consistent with the State Health Plan if the application meets the following conditions:

a. The most recently published data indicates that the occupancy for existing acute care beds for the applicant's facility was sixty-five (65) percent or greater;

b. The applicant has existing licensed acute care and either psychiatric or chemical dependency beds, or both psychiatric and chemical dependency beds;

c. All of the proposed acute care beds are being converted from either licensed psychiatric or chemical dependency beds, or both licensed psychiatric and chemical dependency beds;

d. The occupancy of either psychiatric or chemical dependency beds, or both psychiatric and chemical dependency beds, is less than sixty (60) percent as computed from the latest published data; and

e. The additional acute care beds will be converted and implemented on site at the applicant's existing licensed acute care facility.

(b) Whether the proposal is consistent with applicable biennial budget authorizations and limitations.

(c) Whether the proposal would adversely impact health care costs in the Commonwealth.

(d) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

5. For twenty-four (24) months following the voluntary closure,

revocation of a certificate of need, or the revocation of licensure, the beds, equipment, and services provided by the closed facility shall be reserved for applications for any certificate of need to reestablish the same services, in whole or in part, in the same county as the closed health facility. Such applicants shall be processed under formal review but shall not have to show consistency with the State Health Plan.

(2) Need.

(a) Whether the applicant has identified a need for the proposal in the geographic area defined in the application.

(b) Whether the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. Whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. Whether the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, and whether the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability.

(a) Whether it is economically feasible for the applicant to implement and operate the proposal.

(b) If applicable, whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet.

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (e), the cabinet may grant nonsubstantive review status to an application for which a certificate of need is required in circumstances wherein:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there are no standards or review criteria in the State Health Plan; or

(b) The proposal involves the establishment or expansion of an ambulatory surgery center by an ambulatory surgery center that was existing and operating by July 15, 1997, if the ambulatory surgery center was initially established as a private office or clinics of physicians.

(2) If an application is denied nonsubstantive review status the application shall automatically be placed in the formal review process.

(3) If an application is granted nonsubstantive review status, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(4) If an application is granted nonsubstantive review status, any affected person other than the applicant may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings. Nonsubstantive review applications shall not be comparative but may be consolidated for hearing purposes.

(5) If an application for certificate of need is granted nonsubstantive review status, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status shall not be reviewed for consistency with the State Health Plan. The cabinet shall approve applications for certificate of need that have been granted nonsubstantive review status, unless the presumption of need is rebutted by clear and convincing evidence that there is not a need for the proposed facility or service in the geographic area defined in the application.

(6) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status within thirty-five (35) days of the date that notice is given that nonsubstantive review status

has been granted.

(7) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting any certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, where applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.

(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing.

(b) If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.

(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 3 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) [twenty-five (25)] days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

(5) An application shall not be deferred more than one (1) time unless the applicant can document that state statute, administrative regulation, State Health Plan or the cabinet's utilization statistics affecting the application have changed in the applicant's favor. An application shall not be deferred more than twice.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a) The person is licensed by or obtains a temporary license from the appropriate licensing authority [by the cabinet] to provide the service necessary to alleviate the emergency; and

(b) The cabinet is notified in writing within five (5) days of [after] the commencement of the provision of the service required to alleviate the emergency.

(2) The notice to the cabinet shall be accompanied by an affidavit from the person proposing to provide emergency services, which shall contain the following information:

(a) A detailed description of the emergency;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

(d) If applicable, the name and addresses of the person to whom emergency services are being provided; and

(e) The expected duration of the emergency.

(3) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.

(4) The person providing the emergency service may continue to alleviate the emergency circumstances until the emergency ceases to exist or the cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfers of Certificates of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing the documents with the Office of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the due date; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(3) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters

shall be held by hearing officers from the Cabinet for Health Service's Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing; and via the CON newsletter when applicable [not less than ten (10) days prior to the date of the hearing]; and

(b) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the [their] request by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any non-substantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;

(b) Witness List, Form #4; and

(c) Exhibit List, Form #5 and attached exhibits.

(8) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall file a new Notice of Appearance, Form #3, and may incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5) or file amended Forms 4 and 5. A new party to the hearings must file original Forms 3, 4 and 5. Forms shall be filed in accordance with subsection (7) of this section.

(9) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(10) ~~(9)~~ Each party shall have the opportunity to:

(a) Present its case;

- (b) Make opening statements;
- (c) Call and examine witnesses;
- (d) Offer documentary evidence into the record;
- (e) Make closing statements; and
- (f) Cross-examine opposing witnesses on:
 1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, upon other matters relevant to the issues.

(11) [(10)] A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(12) [(11)] The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

(13) [(12)] The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.

(14) [(13)] The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(15) [(14)] Witnesses shall be examined under oath or affirmation.

(16) [(15)] Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(17) [(16)] The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and other parties at least seven (7) working days before the hearing for formal review applications and five (5) working days for nonsubstantive review applications.

(18) [(17)] A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(19) [(18)] The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(20) [(19)] The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(21) [(20)] In a hearing on an application for a certificate of need, the hearing officer may, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22) [(21)] The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing; or

(c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the

date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky.*, 751 S.W.2d 369 (1988), in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(a) In order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied by an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

1. Has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

2. Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(b) If a show cause hearing is held, the person being charged shall have the burden of showing cause why that person should not be found to:

1. Have established or to be operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation;

2. Be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.

(3) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(4) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of their certificate of need approval and license.

(5) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(6) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(7) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(8) A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(9) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(10) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(11) If a violation is found to have occurred as a result of a show

cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(12) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (2) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of their certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that they have corrected the violation. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of their certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

Section 19. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits if there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or \$100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects where the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, where the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, where the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B; and

(b) Subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #8, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall:

(a) Determine whether the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment: plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; and

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that con-

struction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; and

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensing and Regulation.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide this documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(21) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(22) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review shall be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of and any sanctions for this violation shall be conducted in accordance with Section 18(2) of this administrative regulation.

dance with Section 18(2) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion, Form #7.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that a service or equipment has been added within ten (10) days of addition.

(2) Notice of Addition of a Health Service or Equipment (Form #10) shall be used in making the notification.

Section 24. Acquisition and Relocation of Nonconforming Nursing Facility. (1) Any person proposing to acquire a nursing facility in excess of 300 beds that is not in substantial compliance with 902 KAR 20:310 shall provide a notification of intent to acquire pursuant to KRS 216B.065. Form #9, Acquisition of a Health Facility, Notice of Intent to Acquire, shall be completed and filed.

(2) The nursing facility acquired pursuant to subsection (1) of this section may be relocated to more than one (1) location, if all the beds remain within the county of location of the original facility.

(3) Applications to relocate the nursing facility acquired pursuant to subsection (1) of this section shall be filed pursuant to KRS 216B.095.

(4) Once relocated and licensed, any person proposing to acquire the relocated nursing facilities shall provide notifications of intent to acquire pursuant to KRS 216B.065.

Section 25. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the Office of Certificate of Need.

(2) In order to obtain a certificate of compliance a continuing care retirement community shall complete and file Form #11 thereby certifying that:

(a) All residents shall have a written agreement with the continuing care retirement community;

(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(c) None of the health facilities or health services established by the continuing care retirement community under this section of the administrative regulation shall apply for or become certified for participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;

(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section of the administrative regulation, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or her guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Office of Aging Services at the time a move-out notice is given to a resident;

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The Office of Certificate of Need shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form 11 if all conditions are met. If all conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Office of Certificate of Need the payor source for each of its nursing home beds;

(7) Upon request, the continuing care retirement community shall provide the Office of Certificate of Need the number of each type of bed or living unit within the continuing care retirement community;

Section 26. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds that the hospital operated prior to becoming a critical access hospital should the hospital decide to discontinue operating as a critical access hospital.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Letter of Intent (Form #1) (10/12/99);
- (b) Certificate of Need Application (Form #2A) (6/15/99);
- (c) Certificate of Need Application for Ground Ambulance and Air Ambulance Providers (Form #2B) (6/15/99);
- (d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C) (6/15/99);
- (e) Notice of Appearance (Form #3) (6/15/99);
- (f) Witness List (Form #4) (9/10/97);
- (g) Exhibit List (Form #5) (9/10/97);
- (h) Cost Escalation Form (Form #6) (6/15/99);
- (i) Request for Advisory Opinion (Form #7) (6/15/99);

- (j) Six (6) Month Progress Report (Form #8) (7/15/97);
- (k) Acquisition of a Health Facility, Notice of Intent to Acquire (Form #9) (6/15/99); [and]
- (l) Notice of Addition of a Health Service or Equipment (Form #10) (6/15/99); and

(m) Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC) (Form #11) (7/15/00).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN H. GRAY, Executive Director

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 12, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001 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 January 16, 2001, 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: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4WC, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John H. Gray, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the regulatory requirements for continuing care retirement communities pursuant to HB 452, and certificate of need applicants proposing to reestablish closed health services, facilities and equipment pursuant to HB 502. This administrative regulation also clarifies that the decision to grant or deny nonsubstantive review status lies with the Office of Certificate of Need and that the decision of the Office of Certificate of Need in this regard is the final decision of the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to allow the establishment of continuing care retirement communities pursuant to HB 452, and to allow providers to apply for certificates of need to reestablish closed health services, facilities and equipment pursuant to HB 502.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B requires the Cabinet for Health Services to promulgate necessary administrative regulations. This administrative regulation is necessary to effectuate the provisions of HB 452 and 502.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Administrative regulations are necessary to provide a procedure for the establishment of continuing care retirement communities pursuant to HB 452, and for the reestablishment of closed health services, facilities and equipment pursuant to HB 502.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It will provide for the establishment of continuing care retirement communities and allow closed health services to be reopened.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the existing administrative regulation in order to allow the establishment of continuing care retirement commu-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

nities pursuant to HB 452 and in order to allow the reopening of closed health services pursuant to HB 502.

(c) How the amendment conforms to the content of the authorizing statutes: Same as above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the certificate of need statutes (KRS Chapter 216B) by allowing the establishment of continuing care retirement communities pursuant to HB 452 and by allowing the reopening of closed health services pursuant to HB 502.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all individuals, businesses, organizations, and state and local governments seeking to establish continuing care retirement communities, or seeking to reestablish closed health services, facilities and equipment. It is not yet known how many persons will actually establish continuing care retirement communities or attempt to reopen closed health services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The groups above will be aided by this administrative regulation, in that it will allow them to establish continuing care retirement communities and reopen closed health services - neither of which are possible under the existing administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) 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.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

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

4. How does this administrative regulation affect the local government or any service it provides? NA

CABINET FOR HEALTH SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 10:060. On-site sewage disposal application fee.

RELATES TO: KRS 211.350(5), 2000 Ky. Acts ch. 549, part I.A.41 [1992 Acts c. 462, Part I.G. 52-g]

STATUTORY AUTHORITY: KRS 194.050, 211.350(5), 2000 Ky.

Acts ch. 549, part I.A.41 [Acts 1992 c. 462, Part I.G. 52-G]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350(5) and 2000 Ky. Acts ch. 549, part I.A.41 [Acts 1992 c. 462, part I.G. 52-g] authorize the Cabinet for Health Services [Human Resources] to establish a schedule of reasonable fees to cover the costs of services performed by the cabinet with respect to on-site sewage disposal systems. [The function of] This administrative regulation establishes [is to set forth] the fee to be charged in order to cover the actual cost to the cabinet of the administration of the on-site sewage disposal system program.

Section 1. An application [All applications] for a permit to construct, install, or alter an on-site sewage disposal system filed with the cabinet or its agent shall be accompanied by the following fees:

(a) On-site sewage disposal installation permit fee - [a fee of] thirty (30) dollars; and

(b) On-site sewage disposal cluster system installation permit fee - \$600.

Section 2. Fee Increases. (1) Permit fees established in this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:

[ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt](http://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt)

(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar.

(3) Certified on-site sewage disposal system installers holding a valid certification to install on-site sewage disposal systems and local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:

<http://publichealth.state.ky.us/>

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 30, 2000

FILED WITH LRC: December 1, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 23, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 16, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Klee, Director, (564-7398)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees to be charged in order to cover the actual cost to the cabinet of the administration of the on-site sewage disposal system program. This amendment will increase the financial support to local health departments to support environmental health surveillance and inspectional activities. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of this administrative regulation: This amendment is necessary to meet compliance with Ky. Acts ch. 549, part I.A.41., relative to generation of revenue to support the on-site sewage disposal systems program carried out by local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the On-Site Sewage Disposal Systems program, complies with Ky.

Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Cabinet for Health Services, Division of Public Health Protection and Safety, is responsible for the administration of the on-site sewage disposal systems program. Environmental health personnel within local health departments provide surveillance and inspectional services for the program. This amendment will provide additional financial support for this program to be carried out by the local health departments.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will increase current fees for mandated environmental activities to adjust for 10 years of inflation as well as to adjust the fee structure to account for the changes in retail marketing. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet compliance with Ky. Acts ch. 549, part I.A.41., relative to generation of revenue to support the on-site sewage disposal systems program carried out by local health departments. Currently, the local health department level cost for surveillance and inspectional services in carrying out the environmental health programs is approximately \$20,000,000. The Department for Health Services allocates approximately \$2,000,000 in collected permit and inspection fees to support these programs. Provisions in Ky. Acts ch. 549, part I.A.41 will provide an estimated \$1,397,700 to local health departments to more accurately align the fees charged with the cost of services provided. This amendment provides for part of that estimated increase in local health departments revenues which will go to support the on-site program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the on-site sewage disposal systems program, complies with Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will not increase the on-site sewage disposal system installation permit fee. However, the amendment adds a new category of permit fee in order to more adequately align the cost of service provided with the fee charged. The amendment sets forth the following fees for application for a permit to construct, install or alter an on-site sewage disposal system, or to construct on-site sewage disposal components:

On-site sewage disposal system installation permit fee - \$30

On-site sewage disposal cluster system* installation permit fee - \$600.

*As defined in 902 KAR 10:081, "Cluster systems" are those which accept effluent from more than one structure or facility's sewage pre-treatment unit(s) and transport the collected effluent through a sewer system to one or more common subsurface soil absorption systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will annually affect the following number of businesses or individuals making on-site sewage system applications to the 55 local health departments made up of the 120 counties in Kentucky:

22,030 - On-site sewage disposal systems.

100 - Cluster systems.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those impacted by this amendment are individuals or business entities making an application for an on-site system permit. Each will experience an annual increase in the fees charged for cluster systems. The fee for an on-site sewage system remains at \$30. Both fees will increase annually base on the Consumer Price Index.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The total Cabinet for Health Service cost to cover the revision of the data system billing structure is estimated to be approximately \$5,000. This cost will be a one time only charge for re-structure of fee collection procedures. At the local health department level, there is no anticipated additional cost for implementation of this

amended administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional anticipated implementation cost. This amendment provides for an annual fee increase based upon the Consumer Price Index. Indexing of the fee is expected to maintain the cost for service and the fee charged to be in alignment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All revenue generated through this amendment will be allocated to the local health departments. The total revenue generated is estimated to be 60,000.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In compliance with Ky. Acts ch. 549, part I.A.41., this amendment will set a schedule of permit fees for the on-site sewage disposal system application fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: In compliance with Ky. Acts ch. 549, part I.A.41., fees to be charged relative to on-site sewage disposal system application fees will be increased. In addition, this amendment provides for annual fee increases based upon the Consumer Price Index.

(9) TIERING: Is tiering applied? Tiering was not utilized in establishing the state installation permit because the initial function of this administrative regulation was to set forth the fee to be charged in order to cover the actual cost to the cabinet for administering the on-site sewage disposal system program. Tiering was not utilized in establishing the cluster system installation permit fee because they do not lend themselves to distinction as to size, duration of operation, etc.

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)**

902 KAR 10:121. Inspection fees for public swimming and bathing facilities.

RELATES TO: 2000 Ky. Acts ch. 549, part I.A.41 [1992 Ky. Acts ch. 462, Part I, G., 52-g]

STATUTORY AUTHORITY: KRS 194A.050, 2000 Ky. Acts ch. 549, part I.A.41 [1992 Ky. Acts ch. 462, Part I, G., 52-g]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 and 2000 Ky. Acts ch. 549, part I.A.41 [1992 Ky. Acts ch. 462, Part I, G., 52-g] authorize the Secretary of the Cabinet for Health Services [for Human Resources] to adopt a schedule of reasonable fees covering the cost of annual inspections provided by the Cabinet for Health Services [Human Resources] and any local health department. This administrative regulation establishes [sets forth] a schedule of fees for inspectional services related to public swimming and bathing facilities.

Section 1. Fees for Inspections. For inspections conducted by the department or its representatives to determine compliance with [administrative regulation] 902 KAR 10:120 [adopted by the cabinet] pursuant to KRS 194A.050 and 2000 Ky. Acts ch. 549, part I.A.41 [HB 468], public swimming and bathing facilities shall be subject to the payment of the following fees:

(1) Swimming and bathing facilities with a total water surface area of less than 1,000 or less square feet; or beach fronts of 149 or less [than 150] linear feet - eighty-seven (87) [sixty-five (65)] dollars per year.

(2) Swimming and bathing facilities with a total water surface area of 1,001 or greater [1,000] square feet [or greater]; or beach fronts of 150 linear feet or greater - \$167 [125] per year.

(3) Swimming and bathing facility prerenovation evaluation - \$200.

(4) Swimming and bathing facility plan review for gutter pools and major reconstruction - \$300.

(5) Swimming and bathing facility plan review for skimmer pools and minor reconstruction - \$150.

(6) Swimming and bathing facility plan review with minor reconstruction - \$100.

(7) Swimming and bathing facility rough-in construction inspection

- \$100.

(8) Swimming and bathing facility final construction inspection - \$150.

Section 2. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by a local health department shall be deposited in the Kentucky State Treasury in a trust and agency account for use solely in administering the program. Inspection fees shall be submitted annually prior to May 1. For newly constructed facilities these [such] fees shall be initially submitted at the preopening inspection and at each May 1 date thereafter.

Section 3. Fee Increases. (1) Inspection fees established in this administrative regulation shall be increased annually, effective July 1, 2001, based upon the Consumer Price index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:

<ftp://ftp.bls.gov/pub/special.requests/cpi/cplai.txt>

(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar.

(3) Owners of public swimming and bathing facilities and local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:

<http://publichealth.state.ky.us/>

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 30, 2000

FILED WITH LRC: December 1, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 23, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 16, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Klee, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment will increase revenue an estimated \$115,000. 100% of the increased revenue will be allocated to local health departments to support environmental health surveillance and inspectional activities. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of this administrative regulation: This amendment is necessary to meet compliance with Ky. Acts ch. 549, part I.A.41., relative to generation of revenue to support the public swimming and bathing facilities program carried out by local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the public swimming and bathing facility program, complies with Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Cabinet for Health Services, Division of Public Health Protection and Safety, is responsible for the administration of the public swimming and bathing facilities program. Environmental health personnel within local health departments provide inspectional services for the program. This amendment will provide additional financial support for programs to be carried out by local health departments.

(2) If this is an amendment to an existing administrative regulation,

provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will increase current fees for mandated environmental activities to adjust for 10 years of inflation as well as to adjust the fee structure to account for the changes in retail marketing. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet compliance with Ky. Acts ch. 549, part I.A.41., relative to the generation of revenue to support the public swimming and bathing facilities program carried out by local health departments. Currently, the local health department level cost for surveillance and inspectional services in carrying out the environmental health programs is approximately \$20,000,000. Provisions in Ky. Acts ch. 549, part I.A.41. will provide an estimated \$115,000 to local health departments to more accurately align the fees charged with the cost of services provided. This amendment provides for part of that estimated increase in local health departments revenues which will go to support the public swimming and bathing facilities program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the public swimming and bathing facilities program, complies with Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will increase the public swimming and bathing facilities permit fee and adds categories for swimming and bathing facility prerenovation evaluation, construction plan review, rough-in construction inspection, and final construction inspection. This amendment sets forth the following fees:

Permit fee - Swimming and bathing facilities with water surface of 1,000 square feet or beach fronts of 149 or less linear feet: \$87

Permit fee - Swimming and bathing facilities with water surface of 1,001 or greater square feet or beach fronts of 150 or greater linear feet: \$167

Swimming and bathing facility pre-renovation evaluation: \$200

Swimming and bathing facility plan review for gutter pools and major reconstruction: \$300

Swimming and bathing facility plan review for skimmer pools and minor reconstruction: \$150

Swimming and bathing facility plan review with minor reconstruction: \$100

Swimming and bathing facility rough-in construction inspection: \$100

Swimming and bathing facility final construction inspection: \$150

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will annually affect the following number of businesses or individuals making public swimming or bathing facility applications to the 55 local health departments made up of the 120 counties in Kentucky:

2,330 swimming and bathing facilities

300 applications for plan reviews

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those impacted by this amendment are individuals or business entities making an application for a public swimming or bathing facility inspection. Each will experience an annual increase in the inspection fee based on Consumer Price Index.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The total Cabinet for Health Service cost to cover the revision of the data system billing structure is estimated to be approximately \$5,000. This cost will be a one time only charge for re-structure of fee collection procedures. At the local health department level, there is no anticipated additional cost for implementation of this amended administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional anticipated implementation cost. This amendment provides for an annual fee increase based upon the Consumer Price Index. Indexing of the fee is expected to maintain the cost for service and the fee charged to be in alignment.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: All revenue generated through this amendment will be allocated to the local health departments. The total revenue generated is estimated to be \$115,000.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In compliance with Ky. Acts ch. 549, part I.A.41., this amendment will set a schedule of inspection fees for the public swimming and bathing facility.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: In compliance with Ky. Acts ch. 549, part I.A.41., fees to be charged relative to public swimming and bathing facilities will be increased. In addition, this amendment provides for annual fee increases based upon the Consumer Price Index.

(9) TIERING: Is tiering applied? Tiering was utilized for the annual permit to operate fees in order to prevent a disproportional impact on regulated entities, with the exception of construction inspection fees related to prerenovation evaluation, plan reviews, rough-in construction inspections and final construction inspections. The nontiered categories do not lend themselves to distinction as to size, duration, etc.

**CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)**

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 214.175, 216.2970, 216B.010, 216B.015, 216B.040, 216B.042, 216B.045 to 216B.055, 216B.075, 216B.105 to 216B.131, 216B.140 to 216B.250, 216B.990, 311.241 to 311.247, 311.560(4), 311.992, 314.011(8), 314.042(8), 320.210(2), 333.030, 29 CFR 1910.1030(d)(2)(vii), 42 CFR 405, 412.23(e)

STATUTORY AUTHORITY: KRS 216B.010, 216B.040, 216B.042, 42 USC 263a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Definitions. (1) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an accredited Record Technician by the American Medical Record Association.

(2) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation producing machines.

(3) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection.

(5) "Long-term acute inpatient hospital services" means acute inpatient services provided to patients whose average inpatient stay is greater than twenty-five (25) days.

(6) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority.

(7) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs or tissues for transplantation.

(8) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for

the purpose of providing psychiatric services.

(10) "Registered, certified or registry-eligible dietitian" means a person who is certified in accordance with KRS Chapter 310.

(11) "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association.

(12) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(13) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test shall be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(14) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and administrative regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at the meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. These reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to

the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility:

1. The history and physical examination report shall be transferable and serve to meet the history and physical examination requirement for the licensed level of care that a patient has been transferred to pursuant to KRS 216B.175(3); and

2. [.] The complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the gov-

erning authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership including licensure to practice medicine or dentistry in Kentucky, except for graduate physicians in their first year of hospital training. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members and allied health professionals, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record.

a. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.

b. Skin testing shall not be required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multi-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment.

d. All staff who have never had a skin test of ten (10) or more millimeters induration shall be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, shall receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with *Mycobacterium tuberculosis*. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician or other ordering personnel acting within the limits of their statutory scope of practice. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;
 2. Health records;
 3. Evidence of current registration, certification, or licensure of personnel;
 4. Records of training and experience;
 5. Records of performance evaluation.
- (10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

- a. Universal blood and body fluid precautions;
- b. Precautions for infections which can be transmitted by the airborne route; and
- c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with nest [harborage] and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. A needle or other contaminated sharp shall not be purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Occupational Safety and Health Administration guidelines at 29 CFR 1910.1030(d)(2)(vii).

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particu-

lar attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept electronically or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(b)2 of this section;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or other ordering personnel acting within the limits of their statutory scope of practice;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, dentist, or other ordering personnel acting within the limits of their statutory scope of practice when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthesiologist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. Physician's, dentist's, or other ordering personnel acting within the limits of their statutory scope of practice when applicable, progress notes and nurses' observations;

12. Record of temperature, blood pressure, pulse and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. Discharge summary, including condition of patient on discharge, and date of discharge;

15. In case of death, autopsy findings, if performed; and

16. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

5. Procedures for the hospital administrator or his designee to report any information about the possible sale, purchase, or brokering of a transplantable organ to the Cabinet for Health Services, Office of the Inspector General, as required by KRS 311.241(3).

(d) A patient with impending or declared brain death or cardiopulmonary death as determined pursuant to KRS 446.400 should not be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his patient. Other qualified personnel may complete medical histories, perform physical examinations, record findings, and compile discharge summaries, in accordance with their scope of practice and the hospital's protocols and bylaws.

(c) A complete history and physical examination shall be conducted pursuant to KRS 216B.175(2).

1. The history and physical examination shall include:

a. A description of the patient's chief complaint, the major reason for hospitalization;

b. A history of the patient's present illness;

c. A history of the patient's past illnesses;

d. A history of the patient's surgeries;

e. A history of the patient's medications;

f. A history of the patient's allergies;

g. A patient's social history;

h. A history of the patient's immunizations;

i. A review of the patient's anatomical systems and their level of function at the time of the exam;

j. A patient's vital signs;

k. A general observation of the patient's alertness;

l. A general observation of the patient's debilities; and

m. A general observation of the patient's emotional behavior;

2. The results of the history and physical examination shall be recorded, reviewed for accuracy, and signed by the practitioner conducting the examination. [and recorded within twenty-four (24) hours after admission of the patient.]

(d) The attending medical staff member shall state his final diagnosis, assure that the discharge summary is completed and sign the records within thirty (30) days following the patient's discharge.

(e) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(f) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of

the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. Medications or treatments shall not be given without a written order signed by a physician, dentist, or other ordering personnel acting within the limits of their statutory scope of practice. Telephone orders for medications shall be given only to a licensed practical or registered nurse or a pharmacist and signed by the physician, dentist, or other ordering personnel acting within the limits of their statutory scope of practice within seventy-two (72) [~~twenty-four (24)~~] hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. Patient restraints or protective devices, other than bed rails, shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered, certified or registry-eligible dietician either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accor-

dance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within the limits of their statutory scope of practice. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005.

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to 42 CFR Part 405, KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Laboratory services shall be under the direction of a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

7. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the proficiency testing and quality control provisions in accordance with certification requirements under 42 USC Part 263a.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in

subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and administrative regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and book-keeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications or prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations prom-

ulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service or examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying, administering and removing radioactive elements, disintegration products, and radioactive isotopes. Certified radiation operators, under the direction of a physician may administer medications allowed within their professional scope of practice and context of radiological services and procedures being performed.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration or rehabilitation service. If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration or rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department or service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility

and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient

or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a pre-anesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery, in accordance with 902 KAR 4:020.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(i) The hospital shall comply with the provisions of KRS 214.175 in participating in surveys relating to the determination of alcohol or other substance abuse among pregnant women and newborn infants.

(j) The hospital shall comply with the provisions of KRS 216.2970 in conducting auditory examinations for newborn infants.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure administrative regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation and seeking to qualify for available Title XVIII Medicare reimbursement may provide long-term acute inpatient hospital services pursuant to applicable federal law and upon the following conditions:

(a) The area of the hospital designated to provide long-term acute

inpatient hospital services shall provide services in compliance with this administrative regulation and shall have:

1. An average length of inpatient stay greater than twenty-five (25) days.

2. A separate governing body.

3. A separate medical staff.

4. A separate chief executive officer.

(b) All services shall be provided through the use of employees or under contracts or other agreements with entities other than the host hospital or a third entity that controls both the hospital and the area designated to provide long-term acute inpatient hospital services, except that food and dietetic services, housekeeping, maintenance and other services necessary to maintain a clean and safe physical environment may be obtained under contracts or other agreements with the host hospital or a third entity that controls both the host hospital and the area designated to provide long-term acute inpatient hospital services or as otherwise permitted by federal law.

(c) Hospitals wishing to provide long-term acute inpatient hospital services may request authorization from the Division of Licensing and Regulation, Office of Inspector General, Cabinet for Health Services. The Division of Licensing and Regulation shall conduct a survey to determine whether the requirements of this section are met and shall notify the hospital of the survey results by letter.

(2) A hospital that establishes its authority to be reimbursed for Title XVIII Medicare for long-term care acute inpatient hospital services pursuant to this section, shall not receive Title XIX Medicaid reimbursement for these services.

PAMELA J. MURPHY, Inspector General

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 28, 2000

FILED WITH LRC: November 28, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, 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 January 16, 2001, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Alex Reese

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum state licensure requirements for hospital operations and services. Requirements for the scope of operations, the administration, and the provision of services are outlined.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum licensure requirements for hospital operation and services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.042 requires that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Office of the Inspector General the authority to ensure that hospitals provide adequate needs to meet patient need and provide for patient safety.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amended administrative regulation will add a reference to the provisions of KRS 216B.175(2), which establishes the time-frame in which a history and physical examination must be performed. The amended regulation will also reference KRS 216B.175(3), which allows a history and physical examination that was conducted upon a patient's admission to a hospital to be transferable to another licensed level of care within the same facility. The content of the history and physical examination is established pursuant to KRS 216B.175(4). The amended regulation will include a reference to KRS 216.2970, which requires hospitals with at least 40 births a year to provide auditory screenings for newborns. Finally, the amended regulation will change the time frame that a prescribing professional has to counter-sign verbal orders from 24 hours to 72 hours.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is required to reference statutory changes enacted by the 2000 General Assembly of the Kentucky State Legislature.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.042 requires that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

(d) How the amendment will assist in the effective administration of the statutes: The amended administrative regulation will continue to allow the Office of the Inspector General the authority to ensure that hospitals provide adequate needs to meet patient need and provide for patient safety. The amended regulation will also incorporate statutory changes enacted during the 2000 General Assembly of the Kentucky Legislature.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 123 licensed hospitals subject to the requirements of this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The hospitals subject to the amended administrative regulation will see a minimal impact. History and physical examinations are required by the existing administrative regulation, the amended administrative regulation will simply define the content of the examination. The content required by the amended regulation is similar to requirements hospitals are currently subject to which are set forth by HCFA and the Joint Commission on Accreditation of Health Care Organizations. The provision to allow for a history and physical examination transferable to another licensed level of care within the same facility will allow hospitals to eliminate a redundant service and thereby help to reduce healthcare costs. The addition of more flexibility in the timeframe established to conduct a history and physical examination will allow the hospitals the ability to better control resources and will not adversely impact patient care. The requirement for auditory screenings will result in a minimal increase in costs and provide a great benefit to patients. The additional time granted for the authentication of verbal medicine orders will provide a more realistic timeframe for hospitals to meet.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs or savings to the agency as the time and resources required to regulate hospitals will remain the same.

(b) On a continuing basis: There will be no costs or savings to the agency as the time and resources required to regulate hospitals will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funding required to implement this regulation.

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HEALTH SERVICES
Office of Inspector General
(Amendment)**

902 KAR 20:180. Psychiatric hospitals; operation and services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.175, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 311.560(3), (4), 314.011(8), 314.042(8), 320.240(14) [~~EO 96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals which have a psychiatric unit. [~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.~~]

Section 1. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers and other professionals with special education or experience in the care of persons with mental illness and [the mentally ill] who are involved in the diagnosis and treatment of patients with mental illness.

(3) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a [mentally ill] patient with a mental illness, with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(5) "Seclusion" means the confinement of a patient with a mental illness or mental retardation [mentally ill or mentally retarded patient] alone in a locked room.

Section 2. Scope of Operation and Services. Psychiatric hospitals are establishments with organized professional staffs and permanent facilities with inpatient beds, which provide general medical and psychiatric services, continuous nursing services, psychological services, therapeutic activities, social services, and related support services for the diagnosis and treatment of patients who have a variety of mental illnesses.

Section 3. Applicability. (1) General acute care hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this administrative regulation. A facility requesting licensure as a psychiatric hospital exclusively shall meet the requirements of this administrative regulation.

(2) A facility shall not be licensed as or be called a psychiatric hospital unless it provides the full range of services required by this administrative regulation and provides for the treatment of a variety of mental illnesses. Facilities which receive certificate of need approval

and are licensed after the effective date of this administrative regulation which have, according to the last Annual Hospital Utilization Report, an average daily census of patients whose primary illness is alcoholism or other chemical dependency exceeding ten (10) percent of the licensed bed capacity shall apply for a certificate of need to convert an appropriate number of beds to be licensed under 902 KAR 20:160, Chemical dependency treatment services.

Section 4. Administration and Operation. (1) General requirements.

(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.

(b) The hospital shall comply with the requirements of KRS Chapters 202A and 202B [~~and 902 KAR Chapter 12~~], Hospitalization of mentally ill and mentally retarded.

(2) Professional staff. A facility requesting licensure as a psychiatric hospital exclusively which operates with an organized professional staff shall comply with the following requirements rather than those in 902 KAR 20:016, Section 3(8):

(a) The hospital shall have a professional staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of clinical care provided to patients and for the ethical conduct and professional practice of its members.

(b) The professional staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. Require that a licensed physician be responsible for admission, diagnosis, all medical care and treatment, and discharge; 2. State the necessary qualifications for professional staff membership;

3. Define and describe the responsibilities and duties of each category of professional staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges, to include credentials review;

4. Provide a mechanism for appeal of decisions regarding staff membership and privileges;

5. Provide a method for the selection of officers of the professional staff;

6. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meetings of the professional staff; and

7. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, pharmacy and therapeutic committee, utilization review committee and quality assurance committee.

(c) The hospital shall develop a process of appointment to the professional staff which will assure that the person requesting staff membership is appropriately licensed, certified, registered, or experienced, and qualified for the privileges and responsibilities sought.

(3) Policies.

(a) The hospital's written admission and discharge policies shall be consistent with the requirements of KRS Chapters 202A and 202B [~~and 902 KAR Chapter 12~~], Hospitalization of Mentally Ill and Mentally Retarded.

(b) The hospital shall have written policies pertaining to patient rights and the use of restraints and seclusion consistent with KRS Chapters 202A and 202B [~~and 902 KAR Chapter 12~~], Hospitalization of Mentally Ill and Mentally Retarded.

(c) The hospital shall also have written policies concerning the use of special treatment procedures that may have abuse potential, or be life-threatening, and specifying the qualifications required for professional staff using special treatment procedures.

(4) Patient rights. The hospital shall assure that patient rights are provided for pursuant to the requirements of KRS Chapters 202A and 202B [~~and 902 KAR Chapter 12~~], Hospitalization of Mentally Ill and Mentally Retarded.

(5) Medical records.

(a) Patient information shall be released only on written consent of

the patient or the patient's authorized representative, or as otherwise authorized by law. The written consent shall contain the following information:

1. The name of the person, agency or organization to which the information is to be disclosed;
2. The specific information to be disclosed;
3. The purpose of disclosure; and
4. The date the consent was signed and the signature of the individual witnessing the consent.

(b) In addition to the requirements of 902 KAR 20:016, Section 3(11)(d) the medical record shall contain:

1. Appropriate court orders or consent of patient, appropriate family members or guardians for admission, evaluation, and treatment;
2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;
3. Results of the psychiatric evaluation;
4. A complete social history;
5. An individualized comprehensive treatment plan;
6. Progress notes, dated and signed by physician, nurse, social worker, psychologist, or other appropriate individuals involved in treatment of patient. Progress notes shall document all services and treatments provided and the patient's progress in response to such services and treatments;
7. A record of the patient's weight;
8. Special clinical justification for the use of special treatment procedures specified in Section 5(3) of this administrative regulation;
9. A discharge summary which includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or after care as well as a brief summary of the patient's condition on discharge;
10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and
11. When an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours, with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 5. Patient Management. (1) Assessment. The hospital shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, as well as the psychiatric diagnosis, shall be made on each patient at the time of admission.

(b) A history and physical examination shall be conducted pursuant to KRS 216B.175(2).

1. The history and physical examination shall include:

a. A description of the patient's chief complaint, the major reason for hospitalization;

b. A history of the patient's present illness;

c. A history of the patient's past illnesses;

d. A history of the patient's surgeries;

e. A history of the patient's medications;

f. A history of the patient's allergies;

g. A patient's social history;

h. A history of the patient's immunizations;

i. A review of the patient's anatomical systems and their level of function at the time of the exam;

j. A patient's vital signs;

k. A general observation of the patient's alertness;

l. A general observation of the patient's debilities; and

m. A general observation of the patient's emotional behavior.

2. The results of the history and physical examination shall be recorded, reviewed for accuracy, and signed by the practitioner conducting the examination. [of each patient shall be completed and appropriate laboratory tests shall be initiated within twenty-four (24) hours after admission. A physician shall be responsible for assessing each patient's physical health.]

(c) A psychiatric evaluation for each patient shall be completed within seventy-two (72) hours of admission. It shall include a medical history; a record of mental status; details regarding onset of illness and circumstances leading to admission; a description of attitudes and behavior; an estimate of intellectual functioning, memory functioning,

and orientation; and an inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, aptitudes, and interest.

(f) When appropriate, nutritional, vocational, and legal assessments shall be conducted. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans. Each patient shall have a written individualized treatment plan that is based on assessments of his clinical needs and approved by the patient's attending physician. Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(a) Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on at least an assessment of the patient's presenting problems, physical health, emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation. It shall be based on a comprehensive assessment of the patient's needs and include a substantiated diagnosis and the short-term and long-range treatment needs and address the specific treatment modalities required to meet the patient's needs.

1. The treatment plan shall include referrals for services not provided directly by the facility.

2. The treatment plan shall contain specific and measurable goals for the patient to achieve.

3. The treatment plan shall describe the services, activities, and programs to be provided to the patient, and shall specify staff members assigned to work with the patient and also the time and frequency for each treatment procedure.

4. The treatment plan shall specify criteria to be met for termination of treatment.

5. The patient shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the patient's record.

6. A specific plan for involving the patient's family or significant others shall be included in the treatment plan when indicated.

7. The treatment plan shall be reviewed and updated through multidisciplinary case conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of restraints, seclusion and other special treatment procedures which may have abuse potential or be life threatening.

(b) The documentation shall include a physician's, advanced registered nurse practitioner's as authorized in KRS 314.011(8) and 314.042(8), or physician assistant's as authorized in KRS 311.560(3) and (4) written order, justification for the use of the procedure, the required consent forms, a description of any procedures employed to protect the patient's safety and rights, and a description of the procedure used.

(c) The use of physical restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent a patient from injuring himself or others, or to prevent serious disruption of the therapeutic program;

2. A written, time-limited order from a physician, advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or physician assistant as authorized in KRS 311.560(3) and (4) shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or

seclusion;

5. The head of the medical staff or his designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in a manner that causes undue physical discomfort, harm, or pain to the patient;

7. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of the toilet; and staff shall document in the patient's record that such attention was given to the patient; and

(d) Locking restraints may be used in the circumstances outlined in subparagraph 5 of this paragraph, if prior to the facility's use, the cabinet finds that the facility has instituted policies which comply with the provisions of paragraph (c) of this subsection and the following additional requirements:

1. The facility's direct care nursing staff shall have in their possession at least two (2) keys to the locking restraint so that the restraint can be immediately removed in the case of an emergency and a plan setting forth designated nursing staff responsible for the keys and how the keys are to be used;

2. Orders for the locking restraints shall be time-limited as follows:

a. Four (4) hours for adults up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached;

b. Two (2) hours for children and adolescents ages nine (9) to seventeen (17) up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached;

c. One (1) hour for patients under the age of nine (9) up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached; and

d. Orders pursuant to this paragraph shall specify the restraint type and criteria for release in the patient's medical record.

3. If, after twenty-four (24) hours, a patient still needs restraints, the patient shall receive a face-to-face reassessment by a licensed physician for continuation of the use of the restraint. If the restraint is continued, the physician shall write a time-limited order according to the time frames set out in subsection (2) of this section;

4. A facility may reinstitute the use of a restraint that has been discontinued if the time frame limited order for the restraint has not expired; and

5. A facility found to be in compliance with this section may use locking restraints only under the following circumstances:

a. For the transport of forensic or other impulsively violent patients;

b. For the crisis situation stabilization of forensic and other impulsively violent patients;

c. To prevent a patient that has demonstrated the ability to remove themselves from a nonlocking restraint on one (1) or more occasions from harming themselves or others; or

d. For patients requiring ambulatory restraints as approved by a behavioral health management team.

Section 6. Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified to provide the leadership required for an intensive treatment program.

1. The clinical director, or equivalent, shall be certified by the American Board of Psychiatry and Neurology, or meet the training and experience requirements for examination by the board.

2. If the psychiatrist in charge of the clinical program is not board certified, there shall be evidence that consultation is given to the clinical program on a continuing basis by a psychiatrist certified by the American Board of Psychiatry and Neurology.

(b) General medical services provided in the hospital shall be under the direction of a physician member of the professional staff in accordance with staff privileges granted by the governing authority.

1. The attending physician shall assume full responsibility for diagnosis and care of his patient. Physician assistants and advanced registered nurse practitioners may provide services in accordance with their scope of practice and the hospital's protocols and bylaws.

2. ~~A physician member of the professional staff shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.~~

3. All incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through agreement with outside resources. When the patient's condition requires services not available in the hospital, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

3. [4.] There shall be a written plan delineating the manner in which emergency services are provided by the hospital or through clearly defined arrangements with another facility. The plan shall clearly specify the following:

a. The arrangements the hospital has made to assure that the patient being transferred for emergency services to a nonpsychiatric facility will continue to receive further evaluation or treatment of his psychiatric problem, as needed;

b. The policy for referring patients needing continued psychiatric care after emergency services back to the referring facility; and

c. The policy concerning notification of the patient's family of emergencies and of arrangements that have been made for referring or transferring the patient to another facility for emergency service.

(c) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(d) There shall be sufficient physician staff coverage for all psychiatric and medical services of the hospital in keeping with their size and scope of activity.

(e) The attending physician shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(2) Nursing services.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) The psychiatric nursing service shall be under the direction of a registered nurse who:

1. Has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing; or

2. Has a baccalaureate degree in nursing with two (2) years' experience in nursing administration or supervision and experience in psychiatric nursing.

(c) There shall be a registered nurse on duty twenty-four (24) hours a day.

(d) There shall be an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each patient's active treatment program.

(e) There shall be continuing in-service and staff development programs to prepare the registered nurses and other nursing personnel for active participation in interdisciplinary meetings affecting the planning or implementation of nursing care plans for patients.

(3) Psychological services.

(a) The hospital shall provide psychological services to meet the needs of patients.

(b) Psychological services shall be provided under the direction of a licensed psychologist.

(c) There shall be an adequate number of psychologists, consultants, and supporting personnel to assist in essential diagnostic formulations, and to participate in program development and evaluation of program effectiveness, in training activities and in therapeutic interventions.

(4) Therapeutic activities.

(a) The hospital shall provide a therapeutic activities program that is appropriate to the needs and interests of the patients and is directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(b) The number of qualified therapists, support personnel, and consultants shall be adequate to provide comprehensive therapeutic activities, such as occupational, recreational, and physical therapy, consistent with each patient's active treatment program.

(5) Pharmaceutical services. The hospital shall comply with requirements of 902 KAR 20:016, Section 4(5) and the following addi-

tional requirements:

(a) Medications shall be administered by a registered nurse, a physician, or dentist, except in the case of a licensed practical nurse under the supervision of a registered nurse.

(b) No medication shall be given without a written order signed by a physician, dentist when applicable, advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized in KRS 311.560(3) and (4). Telephone orders for medications shall be given only to licensed practical or registered nurses or a pharmacist and signed by the physician, dentist, advanced registered nurse practitioner, therapeutically-certified optometrist, or physician assistant within seventy-two (72) [twenty-four (24)] hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

(6) Laboratory services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(4) concerning the provision of laboratory and pathology services.

(7) Social services.

(a) The hospital shall provide social services to meet the need of the patients.

(b) There shall be a director of social services who has a master's degree from an accredited school of social work.

(c) There shall be an adequate number of social workers, consultants, and other assistants or case aides to perform the following functions:

1. Secure information about patients development and current life situations to provide psychosocial data for diagnosis and treatment planning and for direct therapeutic services to patients, patient groups or families;

2. Identification or development of community resources including family or foster care programs;

3. Participate in interdisciplinary conferences and meetings concerning diagnostic formulation, treatment planning and progress reviews; and

4. Participate in discharge planning, arrange for follow-up care, and develop mechanisms for exchange of appropriate information with sources outside the hospital.

(8) Dietary services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, plus the additional requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services. If radiology services are provided within the facility, the hospital shall comply with the requirements of 902 KAR 20:016, Section 4(6) concerning the provision of such services. If they are not provided within the facility, the hospital shall have arrangements with an outside source, which shall be outlined in a written plan, for the provision of radiology services. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. Psychiatric hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and designate the location and number of beds to be used for this purpose.

PAMELA J. MURPHY, Inspector General

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 28, 2000

FILED WITH LRC: November 28, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, 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 January 16, 2001, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Alex Reese

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum state licensure requirements for psychiatric hospital operations and services. Requirements for the scope of operations, the administration, and the provision of services are outlined.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum licensure requirements for psychiatric hospital operation and services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health Services regulate health facilities and health services. This regulation provides minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals which have a psychiatric unit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Office of the Inspector General the authority to ensure that hospitals provide adequate needs to meet patient need and provide for patient safety.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amended administrative regulation will add a reference to the provisions of KRS 216B.175(2), which establishes the time-frame in which a history and physical examination must be performed. The content of the history and physical examination is established pursuant to KRS 216B.175(4). The amended regulation will also change the time frame that a prescribing professional has to counter-sign verbal orders from 24 hours to 72 hours.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is required to reference statutory changes enacted by the 2000 General Assembly of the Kentucky State Legislature.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health Services regulates health facilities and health services. This regulation provides minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals, which have a psychiatric unit.

(d) How the amendment will assist in the effective administration of the statutes: The amended administrative regulation will continue to allow the Office of the Inspector General the authority to ensure that hospitals provide adequate needs to meet patient need and provide for patient safety. The amended regulation will also incorporate statutory changes enacted during the 2000 General Assembly of the Kentucky Legislature.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there 14 licensed psychiatric hospitals and 27 licensed general hospitals with psychiatric units that are subject to the requirements of this administrative regulation.

(4) Provide an assessment of how the above group or groups will

be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The hospitals subject to the amended administrative regulation will see a minimal impact. History and physical examinations are required by the existing administrative regulation, the amended administrative regulation will simply define the content of the examination. The content required by the amended regulation is similar to requirements hospitals are currently subject to which are set forth by HCFA and the Joint Commission on Accreditation of Health Care Organizations. The additional time granted for the authentication of verbal medicine orders will provide a more realistic timeframe for hospitals to meet.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs or savings to the agency as the time and resources required to regulate hospitals will remain the same.

(b) On a continuing basis: There will be no costs or savings to the agency as the time and resources required to regulate hospitals will remain the same.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funding required to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

902 KAR 22:040. Charitable health care providers.

RELATES TO: KRS 216.940, 216.941, 304.40-075

STATUTORY AUTHORITY: KRS 194A.030(4), 216.941(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.941(3) requires a charitable health care provider or sponsoring organization to register with the cabinet by [submitting a registration fee of fifty (\$50) dollars and] filing a registration form required by the cabinet prior to providing charitable health care services in Kentucky. This administrative regulation establishes the registration forms required for a charitable health care provider or sponsoring organization.

Section 1. Definitions. (1) "Charitable health care provider" is defined by KRS 216.940(1).

(2) "Sponsoring organization" is defined by KRS 216.940(2).

Section 2. Registration Requirements. (1) Pursuant to KRS 216.941(3), a charitable health care provider shall file with the cabinet a completed Form CHP-1, Registration of Charitable Health Care Providers.

(2) Pursuant to KRS 216.941(3), a sponsoring organization shall file with the cabinet a completed Form SO/CHP-1, Registration of Sponsoring Organization of Charitable Health Care Providers.

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

(a) CHP-1, Registration of Charitable Health Care Providers, May 1999; and

(b) SO/CHP-1, Registration of Sponsoring Organizations of

Charitable Health Care Providers, May 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Adult and Child Health, Community Health Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 12, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 23, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 16, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 5-W-B, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Danise Newton, 564-8966

(1) Provide a brief summary of:

(a) What this administrative regulation does:

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment removes the \$50 registration fee as mandated by HB 218.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove the \$50 fee so registrants will be able to register to be a charitable health care provider to receive malpractice insurance reimbursement without paying a fee.

(c) How the amendment conforms to the content of the authorizing statutes: HB 218 removed the \$50 fee from the existing statute.

(d) How the amendment will assist in the effective administration of the statutes: The \$50 fee will be removed as mandated by HB 218.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Free health clinics in Kentucky and physicians who desire to provide charity health care, but have not maintained malpractice insurance that would cover charity care.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It will allow providers of charity health care to have an way in which to pay for their malpractice insurance without paying a registration fee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this regulation. The process of charitable health care provider registration and malpractice reimbursement was already in place as mandated in the 1998 General Assembly.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Removes a fee and does not increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45.006. Kentucky bed and breakfast.

RELATES TO: KRS 217.005 to 217.215, 217.992, 2000 Ky. Acts ch. 549, part 1.A.41

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.050, 217.125, 2000 Ky. Acts ch. 549, part 1.A.41 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.215(1) authorizes the Secretary of the Cabinet for Health Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act. The function of this administrative regulation is to establish a uniform code for the regulation of food service operations of [all] bed and breakfast establishments within the Commonwealth of Kentucky for the purpose of protecting the public health and compliance with 2000 Ky. Acts ch. 549, part 1.A.41. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Secretary" means the Secretary of the Cabinet for Health Services.

(2) "Cabinet" means the Cabinet for Health Services or its designee.

(3) "Bed and breakfast establishment" means a bed and breakfast home or a bed and breakfast inn.

(4) "Bed and breakfast home" means a private inn or other unique residential facility [owner-occupied house] where up to five (5) guest rooms are provided and in which the only meal served to guests is breakfast.

(5) "Bed and breakfast inn" means a private inn or other unique residential facility where not more than nine (9) guest rooms are provided and in which the only meal served to guests is breakfast. The innkeeper resides on the premises or property immediately adjacent to it during periods of occupancy.

(6) "Continental breakfast" means a breakfast meal restricted to the following foods:

- (a) Beverages such as coffee, tea and fruit juices;
 - (b) Pasteurized Grade A milk;
 - (c) Fresh fruits;
 - (d) Frozen and commercially processed fruits;
 - (e) Baked goods, such as pastries, rolls, breads, and muffins which are nonpotentially hazardous food;
 - (f) Cereals;
 - (g) Jams, jellies, honey, sorghum syrup and other table syrups;
 - (h) Pasteurized Grade A creams and butters, nondairy creamers or similar products;
 - (i) Commercially manufactured hard cheeses, commercially manufactured cream cheese and commercially manufactured yogurt.
- (7) "Full breakfast" means a breakfast meal including foods other than those listed in the definition of "continental breakfast".
- (8) "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.
- (9) "Potentially hazardous food" means a [any] food or ingredient, natural or synthetic:
- (a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of *Clostridium botulinum*.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Are [Is] raw seed sprouts.

(d) Excluding [The following are excluded]:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) values [value] of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

Section 2. Application for a Permit to Operate; Fees. (1) A [Any] person desiring to operate a bed and breakfast establishment shall make written application for a permit on form DFS-200 provided by the cabinet. The [Such] application shall include:

(a) The name and address of the applicant;

(b) The location and type of the proposed establishment; and

(c) The signature of the applicant.

(2) Prior to approval of an application for a permit, the cabinet shall inspect the proposed establishment to determine compliance with the provisions of this administrative regulation. [The cabinet shall issue a permit to operate if the inspection reveals that the establishment complies with the requirements of the administrative regulation.]

(3) A [(2)-Each] permit to operate a bed and breakfast establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

(4) A [(3)-Each] permit to operate a bed and breakfast establishment, unless previously suspended or revoked, shall expire on December 31, following the date of issuance and be renewable annually upon an application accompanied by the required fee as follows:

(a) Bed and breakfast establishments that provide a full breakfast - eighty-seven (87) [sixty-five (65)] dollars;

(b) Bed and breakfast establishments that serve only a continental breakfast - sixty-seven (67) [fifty (50)] dollars.

Section 3. Food Supplies. (1) Food shall be in sound condition and safe for human consumption. Food shall be obtained from a source which shall comply [sources that comply] with the applicable laws relating to food safety. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment shall be [is] prohibited.

(2) Fluid milk and fluid milk products used shall be pasteurized and shall comply with KRS Chapter 217C and 902 KAR 50:110 [applicable law]. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a bed and breakfast establishment.

(3) [Only] Clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.

(4) [Only] Ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

Section 4. Food Protection. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food shall be protected from:

(a) Cross-contamination between foods; and

(b) [from] Potential contamination by:

1. Insects;

2. Insecticides;

3. Rodents;

4. Rodenticides;

5. Unclean equipment or utensils;

6. Unnecessary hand contact;

7. Draining;
8. ~~[or]~~ Overhead leakage or condensation;
9. Dust;
10. Coughs;
11. ~~[and]~~ Sneezes; or
12. Other agents of public health significance.

(2) The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary times of preparation or service.

(3) Hermetically sealed packages shall be handled so as to maintain product and container integrity.

(4) Pets may be present in the residential kitchen ~~[on the premises]~~, but ~~shall~~ should not be permitted in the kitchen and shall be kept out of food preparation and dining areas during food preparation and service to the public.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during food preparation and service.

(6) Cooking facilities in the residential kitchen shall not be available to guests.

Section 5. Food Preparation. (1) Food shall be prepared with a minimum of manual contact. Food shall be prepared on food-contact surfaces and with utensils that are clean and have been sanitized.

(2) Raw fruits and raw vegetables that will be cooked, cut or combined with other ingredients or that will be otherwise processed into food products by the food establishment shall be thoroughly cleaned with potable water before being used.

(3) Potentially hazardous food processed by cooking shall be cooked to heat all parts of the food to a minimum temperature of 140 degrees Fahrenheit.

(4) For kitchens in bed and breakfast establishments serving a continental breakfast only, ingredients which are potentially hazardous such as milk, cream, and eggs, may be used in food preparation if ~~[provided]~~ the final product is not a potentially hazardous food. ~~[For example,]~~ Stove top skillet, or microwave produced items such as pancakes, waffles, or ~~[and]~~ French toast ~~shall be~~ are prohibited.

(5) For kitchens in bed and breakfast establishments serving a full breakfast, potentially hazardous foods shall be cooked and immediately served to guests. The following food handling practices shall be prohibited ~~[here]~~:

- (a) Cooling and reheating prior to service;
- (b) Hot holding for more than two (2) hours; and
- (c) Service of leftovers.
- (6) Potentially hazardous foods shall be thawed:

(a) In refrigerated units at a temperature not to exceed forty-five (45) degrees Fahrenheit; ~~[or]~~

(b) Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food; ~~[or]~~

(c) In a microwave oven if ~~[only when]~~ the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or if ~~[when]~~ the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process if the food is less than or equal to three (3) pounds.

Section 6. Food Display and Service. (1) Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of:

- (a) Packaging;
- (b) ~~[or by the use of]~~ Easily cleanable display cases;
- (c) Serving line or salad bar protector devices;
- (d) Covered containers for self-service; or
- (e) ~~[by]~~ Other effective means. Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for consumer self-service in bed and breakfast establishments serving a continental breakfast only.

(2)(a) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, or in dispensers or containers.

(b) ~~[except that,]~~ For table service, catsup and other sauces may

be served in the original container or pour-type dispenser.

(c) Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.

(3) Ice for consumer use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from ~~[for]~~ contamination.

(4) Once served to a consumer, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served. ~~[However,]~~ Single-service creamers and completely wrapped pats of butter or margarine may be re-served if still packaged and in sound condition.

Section 7. Employee Health and Practices. (1) No employee, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while affected with a boil, infected wound, or acute respiratory infection, shall work in a bed and breakfast establishment in any capacity in which there is a likelihood of the ~~[such]~~ person contaminating food or food-contact surfaces with pathogenic organisms or transmitting a disease to another person ~~[other persons]~~.

(2) Employees engaged in food preparation, service or ~~[and]~~ warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, after smoking, eating, or using the toilet, and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

(3) Employees shall wear clean outer clothing.

(4) Hairnets, hats, scarves ~~[scarfs]~~ or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of bed and breakfast establishments shall arrange their hair to prevent the contamination of food, equipment or ~~[and]~~ utensils.

(5) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

(6) Employees shall consume food or use tobacco only in designated areas. A ~~[Such]~~ designated area ~~[areas]~~ shall not be located in food preparation areas or in areas where the eating or tobacco use of an employee may result in contamination of food, equipment, or utensils.

(7) ~~[All]~~ Employees shall wash their hands thoroughly with soap and warm water in an adequate hand-washing facility before starting work and as often as necessary to remove soil and contamination. The hands of all employees shall be kept clean while engaged in handling of food or ~~[and]~~ food-contact surfaces.

Section 8. Equipment and Utensils. (1) Equipment and utensils shall be:

- (a) Constructed and repaired with safe materials, including finishing materials;
- (b) ~~[shall be]~~ Corrosion resistant and nonabsorbent; and
- (c) ~~[shall be]~~ Smooth, easily cleanable, and durable under conditions of normal use.

(2) Single-service articles shall be made from clean, sanitary, safe materials.

(3) Equipment, utensils, and single-service articles shall not impart odors, color, taste, nor contribute to the contamination of food.

(4) ~~[(2)]~~ Safe plastic or ~~[safe rubber or]~~ safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods shall be ~~[are]~~ permitted for repeated use.

(5) ~~[(3)]~~ Single-service articles shall not be reused.

(6) ~~[(4)-All]~~ Equipment and utensils shall be maintained in good repair.

Section 9. Cleaning and Sanitation of Equipment and Utensils ~~[Cleaning and Sanitization]~~. (1) Food utensils and equipment shall be stored in a manner to avoid contamination.

(2) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(3) Food-contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

(4) Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(5) Equipment and utensils shall be preflushed or prescraped and, if [when] necessary, presoaked to remove food particles and soil.

(6) Manual cleaning and sanitizing shall be conducted as follows:

(a) For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The regulatory authority may allow the use of compartments other than sinks.

(b) All five (5) steps of the warewashing process shall be completed:

1. Prerinsing or scraping;

2. Application of cleaners for soil removal;

3. Rinsing to remove any abrasives and remove or dilute cleaning chemicals;

4. Sanitation; and

5. Air-drying and draining.

(c) A sanitizing method approved by applicable provisions of the state retail food code, KRS Chapter 217 and 902 KAR 45:005, shall be used.

(d) Wash, rinse and sanitizing solutions shall be maintained in a clean condition.

(e) The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

(f) If [When] chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by law and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used at least once each business day and each time the sanitizing solution is changed.

(7) Mechanical cleaning and sanitizing shall be conducted as follows:

(a) Commercial dishwashers shall [must] comply with applicable provisions of the state retail food code, KRS Chapter 217 and 902 KAR 45:005.

(b) A domestic or homestyle dishwasher may be used if [provided] the following performance criteria are met:

1. The dishwasher shall [must] effectively remove physical soil from all surfaces of dishes.

2. The dishwasher shall [must] sanitize dishes by the application of sufficient accumulative heat.

3. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is a minimum of 150 degrees Fahrenheit after the final rinse and drying cycle.

4. The dishwasher shall [must] be installed and operated according to manufacturer's instructions for the highest level of sanitation [sanitization] possible when sanitizing the kitchen facilities' utensils and tableware. [;] A copy of the instructions shall [must] be available on the premises at all times.

(8) There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitation [sanitization] so as not to interfere with safe food handling, hand washing and the proper use of dishwashing facilities. Equipment, utensils and tableware shall be air-dried.

Section 10. Water Supply and Sewage Disposal. (1) Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the [Cabinet-for] Natural Resources and Environmental Protection Cabinet.

(2) Bottled and packaged potable water shall be obtained from a source that complies with 401 KAR 8:010 through 401 KAR 8:700 [applicable provisions of the Cabinet for Natural Resources and Environmental Protection and the cabinet] and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the

original container.

(3) [All] sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the [Cabinet for] Natural Resources and Environmental Protection Cabinet and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

Section 11. Toilet Facilities for Employees. (1) Toilet facilities shall be installed pursuant to requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, shall be conveniently located, and shall be accessible to employees at all times.

(2) Bathrooms opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by a window [window(s)] or by mechanical means. A soap dispenser and disposable towels shall be provided for hand washing in bathrooms used by food handlers.

(3) Toilet facilities, including toilet fixtures and a [any] related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

Section 12. Hand-washing Facilities for Employees. (1) Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, and shall be conveniently located.

(2) A [Each] hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

(3) A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels shall be [are] prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facilities.

(4) A soap dispenser and disposable towels for use in hand washing shall be provided at the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the toilet, hands shall be first washed in an approved hand-washing facility before they are washed in the kitchen sink.

(5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Section 13. Floors, Walls, Ceilings, and Lighting. The floors, walls, and ceilings and attached equipment in food preparation and service areas and in employee bathrooms of bed and breakfast establishments shall be fabricated from easily cleanable material, shall be maintained in good repair and clean. Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

Section 14. Insect and Rodent Control. (1) Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

(2) Pesticides and rodenticides.

(a) No person shall apply insecticides or rodenticides except:

1. In accordance with applicable requirements of Kentucky Department of Agriculture's Pesticide Use and Application Act, KRS Chapter 217B, Section 5, and 302 KAR 31:005; and

2. In accordance with the manufacturer's labeling; and

3. In such a way that food, food-contact surfaces, and the supply of potable water are not contaminated.

(b) [No] Open pesticide or rodenticide bait boxes shall not be used.

(c) Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils and all containers of toxic material shall be clearly labeled for easy identification.

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(3) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the

attraction of pests.

Section 15. Plan Review of Future Construction. ~~If a [When the]~~ kitchen or employee bathroom facilities of a bed and breakfast establishment ~~is [are hereafter]~~ constructed or extensively remodeled, properly prepared plans and specifications for ~~the [such]~~ construction, remodeling, or alteration, showing layout, arrangements, and construction materials and the location, size and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 16. Inspections; Notices. (1) Inspections. At least once every twelve (12) months, the cabinet shall inspect each bed and breakfast establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. ~~If [Whenever]~~ the cabinet makes an inspection of a bed and breakfast establishment, its representative shall record the findings ~~[on an inspection report form provided for this purpose]~~, and shall furnish a copy of ~~the [such]~~ inspection report ~~[form]~~ to the permit holder or his representative in charge.

(3) Issuances of notices. ~~If [Whenever]~~ the cabinet makes an inspection of a bed and breakfast establishment and determines that any of the requirements of this administrative regulation have been violated, the cabinet shall notify the permit holder or his representative ~~in charge [person in charge of such violations by means of an inspection report form or other written notice]~~. In ~~the [such]~~ notification, the cabinet shall:

(a) ~~Establish [Set forth]~~ the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of the violations found pursuant to the following provisions:

1. If ~~[When]~~ the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, ~~not to exceed [but in any event, by]~~ the time of the next routine inspection.

2. When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, ~~[but in any event,]~~ within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet ~~[but in any event,]~~ not to exceed ten (10) days.

4. If ~~[When]~~ the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of ~~the [such]~~ notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within ~~the [such]~~ ten (10) day period.

5. The report of inspection shall state that the failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings ~~shall [will]~~ be provided if a written request for hearing is filed in accordance with 902 KAR 1:400.

(c) State that failure to comply with any notice issued in accordance with the provisions of this administrative regulation may result in suspension of the permit.

(d) State that an opportunity for appeal from any notice of inspection findings ~~shall [will]~~ be provided if a written request for a hearing is filed with the cabinet within ten (10) days following the service of the notice for correction.

(4) Service of notices. Notices provided for under this section shall be deemed to have been properly served if ~~[when]~~ a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or ~~the [such]~~ notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of ~~the [such]~~ notice shall be filed with the records of the cabinet.

Section 17. Suspension and Revocation of Permits. (1) If ~~[When ever]~~ the cabinet has reason to believe that an imminent public health hazard exists, or if ~~[when ever]~~ the permit holder has interfered with the cabinet in the performance of its duties, or if the establishment rating

score is less than sixty (60), the permit may be suspended immediately upon notice to the permit holder without a hearing. ~~[In such event,]~~ the permit holder may request a hearing.

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct the violation. If ~~[same: Whenever]~~ a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of ~~the [such]~~ notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended permits. A ~~[Any]~~ person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that, in his opinion, the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this administrative regulation, the permit shall be reinstated.

(4) Revocation of permits. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to ~~the [such]~~ action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of ~~the [such]~~ notice, unless a request for a hearing is filed in accordance with 902 KAR 1:400. A permit may be suspended for cause pending its revocation or a hearing ~~[relative thereto]~~.

(5) Hearings. ~~[All]~~ Administrative hearings shall be conducted in accordance with 902 KAR 1:400 and KRS Chapter 13B.

Section 18. Fee Increases. (1) Permit fees established by this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:

<http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>

(2) If the increased fee contains cents, the fee shall be rounded to the next whole dollar.

(3) Bed and breakfast establishment owners holding a valid permit to operate on March 31 prior to the July 1 increase and the local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:

<http://publichealth.state.ky.us>

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 30, 2000

FILED WITH LRC: December 1, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 23, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 16, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Klee, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees to be charged in order to cover the actual cost to the cabinet of the administration of the bed and breakfast facility program. This amendment will increase the financial support to local health departments to support environmental health surveillance and inspectional activities. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of this administrative regulation: This amendment is necessary to meet compliance with Ky. Acts ch. 549, part I.A.41., relative to generation of revenue to support the bed and breakfast program carried out by local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the bed and breakfast program, complies with Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Cabinet for Health Services, Division of Public Health Protection and Safety, is responsible for the administration of the bed and breakfast program. Environmental health personnel within local health departments provide inspectional services for the program. This amendment will provide additional financial support for programs to be carried out by local health departments.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will increase current fees for mandated environmental activities to adjust for 10 years of inflation as well as to adjust the fee structure to account for the changes in retail marketing. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet compliance with 2000 Ky. Acts ch. 549, part I.A.41., relative to the generation of revenue to support the public swimming and bathing facilities program carried out by local health departments. Currently, the local health department level cost for surveillance and inspectional services in carrying out the environmental health programs is approximately \$20,000,000. Provisions in 2000 Ky. Acts ch. 549, part I.A.41. will provide an estimated \$4,300 to local health departments to more accurately align the fees charged with the cost of services provided. This amendment provides for part of that estimated increase in local health departments revenues which will go to support the bed and breakfast program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the bed and breakfast program, complies with 2000 Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish the permit fee for bed and breakfast establishments and provide for an annual increase.

Bed and breakfast establishments that serve continental breakfast: \$67

Bed and breakfast establishments that serve full breakfast: \$87

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will annually affect the following number of businesses or individuals making bed and breakfast establishments applications to the 55 local health departments made up of the, 120 counties in Kentucky: 211 bed and breakfast establishments.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those impacted by this amendment are individuals or business entities making an application to a permit to operate a bed and breakfast establishment. Each will experience an annual increase in the fees charged for a permit to operate a bed and breakfast establishment. The fees will increase annually based on Consumer Price Index.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The total Cabinet for Health Services' cost to cover the revision of the data system billing structure is estimated to be approximately \$5,000. This cost will be a one time only charge for re-structure of fee collection procedures. At the local health department level, there is no anticipated additional cost for implementation of this amended administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional anticipated implementation cost. This amendment provides for an annual fee increase based upon the Consumer Price index. Indexing of the fee is expected to maintain the cost for service and the fee charged to be in alignment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All revenue generated through this amendment will be allocated to the local health departments. The total revenue generated is estimated to be \$4,300.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In compliance with 2000 Ky. Acts ch. 549, part I.A.41., this amendment set a schedule of permit fees for the bed and breakfast establishments

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: In compliance with 2000 Ky. Acts ch. 549, part I.A.41., fees to be charged relative to bed and breakfast establishments will be increased. In addition, this amendment provides for annual fee increases based upon the Consumer Price Index.

(9) TIERING: Is tiering applied? Tiering was utilized to prevent a disproportional impact on regulated entities. Tiering is by those establishments which serve a full breakfast and those which serve a continental breakfast.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions.

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125(2), (3), (4), 217.811, 2000 Ky. Acts ch. 549, part I.A.41

STATUTORY AUTHORITY: KRS 194A.050, 217.125(2), (3), (4), 217.811, 2000 Ky. Acts ch. 549, part I.A.41 [Acts 1992-c-462, Part I, G-52, g]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(2), [and] 217.811 and 2000 Ky. Acts ch. 549, part I.A.41 authorize the Secretary of the Cabinet for Health Services [Human Resources] to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, vending machine companies, and seasonal restricted food concessions for permits to operate and inspection [inspectional] activities carried out by the Cabinet for Health Services [Human Resources]. This administrative regulation establishes [sets forth] the fee to be charged.

Section 1. Fees. (1)(a) Permit fees are required for inspections conducted by the cabinet or its representatives to determine compliance with:

1. Administrative regulations [adopted by the cabinet] for salvage distributors and salvage processing plants; and

2. KRS 217.025, 217.035, and 217.037 applicable to food manufacturing plants and food storage warehouses.

(b) A fee according to the total square footage of the establishment shall be assessed as follows:

1. 0 - 1,000 [5,000] square feet - seventy-five (75) [sixty-(60)] dollars;

2. 1,001 - 5,000 [5,001 - 30,000] square feet - eighty-five (85) dollars [\$140];

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

3. 5,001 - 30,000 [30,001--and over] square feet - \$147; [210-]
4. 30,001 - 40,000 square feet - \$275; or
5. 40,001 or more square feet - \$290.

(2)(a) A fee shall be assessed for inspections of retail food stores, conducted by the cabinet or its representative to determine compliance with administrative regulations ~~[adopted by the cabinet]~~ pursuant to KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:

1. Adulteration;
2. Misbranding;
3. Packaging; and
4. Labeling of food products.

(b) The fee shall be assessed according to the total square footage of the establishment as follows:

1. 0 - 1,000 square feet - twenty-seven (27) [twenty-(20)] dollars;
2. 1,001 - 10,000 square feet - fifty-three (53) [forty-(40)] dollars;

[and]

3. 10,001 - 20,000 [and over] square feet - ninety (90) [seventy (70)] dollars;

4. 20,001 - 30,000 square feet - ninety-five (95) dollars; or
5. 30,001 or more square feet - \$100.

(c) An application for a permit to operate a mobile retail food store shall be accompanied by a fee of twenty-seven (27) dollars.

(3) ~~An [With respect to vending machine companies, each]~~ application for a permit to operate a vending machine company shall be accompanied by a fee of twenty-seven (27) [twenty-(20)] dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:

- (a) One (1) - twenty-five (25) machines - \$107 [eighty-(80) dollars];
- (b) Twenty-six (27) - fifty (50) machines - \$160 [120];
- (c) Fifty-one (51) - 100 machines - \$213 [160];
- (d) 101-150 machines - \$253; or [190; and]
- (e) 151 and over machines - \$414 [310].

(4) ~~An [With respect to food service establishments, each]~~ application for a permit to operate a food service establishment shall be accompanied by a fee of sixty (60) [forty-five-(45)] dollars plus the following fees, if applicable:

(a) Permanent food service establishments with no seats or twenty-five (25) seats or less - sixty (60) [forty-five-(45)] dollars per year;

(b) Permanent food service establishments with twenty-six (26) to fifty (50) seats - ninety (90) [sixty-five-(65)] dollars per year.

(c) Permanent food service establishments with fifty-one (51) to 100 seats - ninety-five (95) dollars per year;

(d) Permanent food service establishments with 101 to 200 seats - \$100 per year;

(e) Permanent food service establishments with 201 or more seats - \$105 per year;

(f) Drive-through window - \$125 per year;

(g) Catering operation - \$110 per year; or

(h) Mobile food unit - \$120 per year. [more than fifty (50) seats - seventy-five (75) dollars per year;]

(5) ~~An [With respect to temporary food service establishments, each]~~ application for a permit to operate a temporary food service establishment shall be accompanied by the following fee:

(a) Three (3) day event - twenty-five (25) dollars; or

(b) Four (4) to fourteen (14) days - thirty (30) dollars. [a fee of twenty (20) dollars;]

(6) ~~An [With respect to seasonal restricted food concessions, each]~~ application for a permit to operate seasonal restricted food concession within a local health department jurisdiction shall be accompanied by a fee of thirty-three (33) [twenty-five-(25)] dollars.

Section 2. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction. Fees received by a local health department [departments] shall be deposited in the Kentucky State Treasury.

Section 3. Fee Increases. (1) Permit and inspection fees established in this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:

<ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>

(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar.

(3) Owners of retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions, holding a valid permit to operate and the local health departments shall receive written notification of the fee increase no later than June 1 each year. The increased fee rates shall be posted on the Department for Public Health web site no later than June 1 each year at:

<http://publichealth.state.ky.us>

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 30, 2000

FILED WITH LRC: December 1, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 23, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 16, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Klee, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees to be charged in order to cover the actual cost to the cabinet of the administration of the retail food establishment, food manufacturing plant, food storage warehouse, salvage processor and distributor, vending machine companies, and seasonal restricted food concession programs. This amendment will increase the financial support to local health departments to support environmental health surveillance and inspectional activities. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of this administrative regulation: This amendment is necessary to meet compliance with Ky. Acts ch. 549, part I.A.41., relative to generation of revenue to support the retail food programs carried out by local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the retail food establishments, food manufacturing plant, food storage warehouse, salvage processor and distributor, vending machine company, and seasonal restricted food concession programs, complies with Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Cabinet for Health Services, Division of Public Health Protection and Safety, is responsible for the administration of the retail food programs. Environmental health personnel within local health departments provide surveillance and inspectional services for the programs. This amendment will provide additional financial support for programs to be carried out by local health departments.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will increase current fees for mandated environmental activities to adjust for 10 years of inflation as well as to adjust the fee structure to account for the changes in retail marketing. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet compliance with Ky. Acts

ch. 549, part I.A.41., relative to the generation of revenue to support the retail food programs carried out by local health departments. Currently, the local health department level cost for surveillance and inspection services in carrying out the environmental health programs is approximately \$20,000,000. Provisions in Ky. Acts ch. 549, part I.A.41. will provide an estimated \$998,400 to local health departments to more accurately align the fees charged with the cost of services provided. This amendment provides for part of that estimated increase in local health departments revenues which will go to support the food safety program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concession programs, complies with Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will increase the retail food program permit and inspection fees. In addition, it adds a new tiering categories within the retail food programs and adds a new category for those Kentucky food manufacturing plants.

Retail food establishment permit and inspection fees:

- Permit fee - \$60 plus
- 0 - 25 seats - \$60
- 26 - 50 seats - \$87
- 51 - 100 seats - \$90
- 101 - 200 seats - \$100
- 201 or more seats - \$125
- Plus drive-through window - \$210
- Plus catering operation - \$110
- Mobile food unit - \$120

Temporary food permit: \$27

Seasonal restricted food concession: \$33

Retail food stores permit fee:

- 0 - 1,000 sq. ft. - \$27
- 1,001 - 15,000 sq. ft. - \$53
- 15,001 - 20,000 sq. ft. - \$93
- 20,001 - 30,000 sq. ft. - \$100
- 30,001 or more sq. ft. - \$110
- Mobile retail truck - \$27

Food manufacturing:

- 0 - 1,000 sq. ft. - \$75
- 1,001 - 5,000 sq. ft. - \$85
- 5,001 - 30,000 sq. ft. - \$147
- 30,001 - 40,000 sq. ft. - \$260
- 40,001 or more sq. ft. - \$310

Vending:

- Commissary - \$27 Plus
- 1 - 25 machines - \$107
- 26 - 50 machines - \$160
- 51 - 100 machines - \$213
- 101 - 150 machines - \$253
- 151 or more machines - \$414

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will annually affect the following number of businesses or individuals making retail food establishment applications to the 55 local health departments made up of the, 120 counties in Kentucky:

- 13,495 retail food establishments and mobile food units
- 6,716 retail food stores
- 1,069 food manufacturing plants and food storage warehouses
- 2,825 temporary food establishments
- 287 seasonal restricted food concessions
- 20 vending machine commissaries
- 83 vending machine companies

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those impacted by this amendment are businesses making an application for a retail food permit. Each will experience an annual increase in the fees charged for a permit and inspection. The fees will increase annually based on the Consumer Price Index.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The total Cabinet for Health Service cost to cover the revision of the data system billing structure is estimated to be approximately \$5,000. This cost will be a one time only charge for re-structure of fee collection procedures. At the local health department level, there is no anticipated additional cost for implementation of this amended administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional anticipated implementation cost. This amendment provides for an annual increase based upon the Consumer Price Index. Indexing of the fee is expected to maintain the cost for service and the fee charged to be in alignment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All revenue generated through this amendment will be allocated to the local health departments. The total revenue generated is estimated to be \$998,400.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In compliance with 2000 Ky. Acts ch. 549, part I.A.41., a set schedule of permit and inspection fees are established for the retail food programs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: In compliance with 2000 Ky. Acts ch. 549, part I.A.41., fees relative to retail food programs will be increased. In addition, this amendment provides for annual fee increases based upon the Consumer Price Index.

(9) TIERING: Is tiering applied? Tiering was utilized in all retail food program areas to prevent a disproportional impact on regulated entities, with the exception of mobile food units, mobile retail food stores, and seasonal restricted food concessions. These areas do not lend themselves to distinction as to size, duration of operation, etc.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:120. Inspection fees; permit fees; hotels, mobile home parks, [and] recreational vehicle parks, youth camps and private water supplies.

RELATES TO: KRS 219.021, 219.041, 219.340, 219.350, 2000 Ky. Acts ch. 549, part I.A.41

STATUTORY AUTHORITY: KRS 194A.050, 219.021, 219.041, 219.340, 219.350, 2000 Ky. Acts ch. 549, part I.A.41 [Acts-1992-c-462, part I, G-52; g]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050, 219.041, and 2000 Ky. Acts ch. 549, part I.A.41 [Acts-1992-c-462, part I, G-52; g] authorize the Secretary for the Cabinet for Health Services [Human-Resources] to provide by administrative regulation a schedule of reasonable fees to be paid by hotels, mobile home parks, [and] recreational vehicle parks, youth camps and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health Services [Human-Resources]. This administrative regulation establishes [is to set forth] the permit and inspection fees to be charged to hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies.

Section 1. Fees for Inspections. For inspections conducted by the cabinet or its representative [to determine compliance with administrative regulations adopted by the cabinet] pursuant to KRS 219.041 and 211.180, hotels, youth camps and private water supply sampling, shall be subject to the payment of the following fees:

(1) Hotels with twenty-five (25) rooms or less - fifty-three (53) [forty (40)] dollars per year.

(2) Hotels with twenty-six (26) - fifty (50) rooms [or more] - ninety (90) [seventy-five (75)] dollars per year.

(3) Hotels with fifty-one (51) - 100 rooms - ninety-five (95) dollars per year.

(4) Hotels with 101 rooms - 200 rooms - \$100 per year.

- (5) Hotels with 201 rooms - 300 rooms - \$110 per year.
- (6) Hotels with 301 - 400 rooms - \$120 per year.
- (7) Hotels with 401 or more rooms - \$130 per year.
- (8) Day youth camps - forty (40) dollars per year.
- (9) Primitive youth camps - forty (40) dollars per year.
- (10) Residential youth camps with one (1) - twenty (20) beds - forty (40) dollars per year.
- (11) Residential youth camps with twenty-one (21) - fifty (50) beds - fifty (50) dollars per year.
- (12) Residential youth camps with fifty-one (51) or more beds - sixty (60) dollars per year.
- (13) Private water supply sampling - fifteen (15) dollars.

Section 2. Permit Fees for Hotels and Mobile Home Parks and Recreational Vehicle Parks. (1) An [Each] application for an annual permit to operate a hotel[] shall be accompanied by a sixty (60) dollar annual fee [as follows: Hotels - forty-five (45) dollars per year].

(2) An [Each] application for an annual permit to operate a mobile home park or recreational vehicle park shall be accompanied by a fee as follows:

- (a) Mobile home park or recreational vehicle park with nine (9) [ten (10)] spaces or less - \$107 [eighty (80) dollars].
 - (b) Mobile home park or recreational vehicle park with ten (10) - fifty (50) spaces - \$150.
 - (c) Mobile home park or recreational vehicle park with fifty-one (51) - 100 spaces - \$160.
 - (d) Mobile home park or recreational vehicle park with 101 - 200 spaces - \$170.
 - (e) Mobile home park or recreational vehicle park with 201 or more spaces - \$180. [Parks with more than ten (10) spaces - \$120]
- (3) An [Each] application for a permit to construct or alter a mobile home park or recreational vehicle park shall be accompanied by a fee of forty-seven (47) [thirty-five (35)] dollars.

Section 3. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate [as required by KRS 219.021 or 219.340 as applicable].

Section 4. Exemptions. A facility [All facilities] operated by the Cabinet for Health Services [Human Resources] or the Justice [Corrections] Cabinet shall be exempt from the payment of inspection fees. Local health departments may exempt private water supply sampling from payment of a fee as a result of an investigation of illness.

Section 5. Fee Increases. (1) Permit and inspection fees established in this administrative regulation shall be increased annually, effective July 1, 2002, based upon the Consumer Price Index for All Urban consumers (CPI-U) U.S. City Average for All Items, published the previous January by the Bureau of Labor Statistics. The annual percentage increase in the CPI-U may be viewed at:

<http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>

(2) If the increased fee contains cents, the fee shall be rounded to the next highest whole dollar.

(3) Owners of hotels, mobile home and recreational vehicle parks, and youth camps holding a valid permit to operate and the local health departments shall receive written notification of the fee increase no later than June 1 each year. If a private water supply is not sampled due to an investigation of illness, the local health department shall advise the requesting individual of the current fee. The fees shall be posted on the Department Public Health web site no later than June 1 each year at:

<http://publichealth.state.ky.us/>

RICE C. LEACH, M.D., Commissioner
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 30, 2000

FILED WITH LRC: December 1, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 23, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 16, 2001. If no notice of intent to attend

the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Klee, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees to be charged in order to cover the actual cost to the cabinet of the administration of the hotel, mobile home park, recreational vehicle park, youth camp and private water supply programs. This amendment will increase the financial support to local health departments to support environmental health surveillance and inspectional activities. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of this administrative regulation: This amendment is necessary to meet compliance with 2000 Ky. Acts ch. 549, part I.A.41., relative to generation of revenue to support the environmental sanitation programs carried out by local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the hotel, mobile home park, recreational vehicle park, youth camp, and private water sampling programs, complies with 2000 Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Cabinet for Health Services, Division of Public Health Protection and Safety, is responsible for the administration of the environmental sanitation programs. Environmental health personnel within local health department provide surveillance and inspectional services for the program. This amendment will additionally provide financial support for programs to be carried out by local health departments.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will increase current fees for mandated environmental activities to adjust for 10 years of inflation as well as to adjust the fee structure to account for the changes in retail marketing. Fees will be increased annually based upon the Consumer Price Index.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet compliance with 2000 Ky. Acts ch. 549, part I.A.41., relative to the generation of revenue to support the environmental sanitation programs carried out by local health departments. Currently, the local health department level cost for surveillance and inspectional services in carrying out all the environmental health programs approximately \$20,000,000. Provisions in 2000 Ky. Acts ch. 549, part I.A.41 will provide an estimated \$220,000 to local health departments to more accurately align the fees charged with the cost of services provided. This amendment provides for part of that estimated increase in local health departments revenues which will go to support the hotel, mobile home park, recreational vehicle park, youth camp, and private water sampling program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth a fee schedule for the hotel, mobile home park, recreational vehicle park, youth camp, and private water sampling programs, complies with 2000 Ky. Acts ch. 549, part I.A.41., and provides for an annual fee increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will add new tiering categories within the environmental sanitation programs. In addition, this amendment establishes new categories for youth camp inspections and private water sampling. The amendment sets forth the following fees:

- Hotels:
- Permit fee - \$60
- Inspection fee - 0 - 25 rooms - \$53
- 26 - 50 rooms - \$90

- 51-100 rooms - \$95
- 101 - 200 rooms - \$100
- 201 - 300 rooms - \$110
- 301 - 400 rooms - \$120
- 401 or more rooms - \$130

Mobile home and recreational vehicle parks:

- Permit fee: 9 spaces or less - \$107
- 10 - 50 spaces - \$150
- 51 - 100 spaces - \$160
- 101 - 200 spaces - \$170
- 201 or more spaces - \$180

Mobile home and recreational vehicle park application to construct permit: \$47

Youth camp inspection fees:

- Day youth camps and primitive youth camps - \$40
- Residential youth camps: 1 - 20 beds - \$40
- 21 - 50 beds - \$50
- 51 or more beds - \$60

Private water sampling: \$15

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will annually affect the following number of businesses or individuals making hotel or youth camp, to construct or operate a mobile home park or recreational vehicle park, or request a private water supply applications to the 55 local health departments made up of the, 120 counties in Kentucky:

- 856 hotels
- 1,513 mobile home parks
- 186 recreational vehicle parks
- 2,205 youth camps
- 3,141 private water samples

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Those impacted by this amendment are individuals or business entities making an application for a permit to operate or construct or requesting a service. Each will experience an annual increase in the permit and inspection fee. The fees will increase annually based upon the Consumer Price Index.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The total Cabinet for Health Service cost to cover the revision of the data system billing structure is estimated to be approximately \$1,000. This cost will be a one time only charge for restructure of fee collection procedures. At the local health department level, there is no anticipated additional cost for implementation of the amended administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional anticipated implementation cost. This amendment provides for an annual fee increase based upon the Consumer Price Index. Indexing of the fee is expected to maintain the cost for service and the fee charged to be in alignment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All revenue generated through this amendment will be allocated to the local health departments. The total revenue generated is estimated to be 220,000.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In compliance with 2000 Ky. Acts ch. 549, part I.A.41., a set schedule of permit and inspection fees are established for the hotels, mobile home parks, recreational vehicle parks, youth camps and private water sampling programs. The purpose of this amendment is to establish those fee rates.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: In compliance with 2000 Ky. Acts ch. 549, part I.A.41., fees relative to hotels, mobile home parks, recreational vehicle parks, youth camps and private water sampling will be increased. In addition, this amendment provides for annual fee increases based upon the Consumer Price Index.

(9) TIERING: Is tiering applied? Tiering was utilized in all environmental sanitation program areas to prevent a disproportional impact on regulated entities, with the exception of private water supply

samples. The private water supply sampling program does not lend itself to distinction as to size, duration of operation, etc. In addition, an exemption from payment of fees has been added for private water sampling when conducted in relation to an investigation of illness.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physical Health
(Amendment)

907 KAR 1:019. Pharmacy services.

RELATES TO: KRS 61.805 through 61.850, 205.520, 205.5631 through [to] 205.5639, 205.6316, 205.8451, 217.015, 217.822, 311.550, 311.560, 314.011, 314.042, 315.300, 42 CFR 440.120, 447.331, 447.332, 447.333, 447.334, 42 USC 1396a, b, c, d, r-8

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.5631-205.5639, 205.561

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 provisions relating to pharmacy services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy.

Section 1. Definitions. (1) "Commissioner" is defined in KRS 205.5631.

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

(3) "Dosage form" means a tablet, capsule, elixir, cream, or other distinct physical formulation of a drug.

(4) "DMRAB" means the Drug Management Review Advisory Board.

(5) [(2)] "Drug class" means a designation which indicates the therapeutic properties of a drug.

(6) [(3)] "Drug file" means the Kentucky Medicaid Program drug file consisting of every drug that may be eligible for reimbursement under the Medicaid Pharmacy Program including a drug requiring or not requiring prior authorization.

(7) [(4)] "FDA" means Food and Drug Administration.

[(5)] "Legend drug" is defined in KRS 217.015.

(6) "Line extension" means a new strength, dosage form, delivery system, or indication of a drug.]

(8) [(7)] "Manufacturer" is defined in KRS 315.126.

(9) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

(a) Provided in accordance with 42 CFR 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally-accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of the member, caregiver or the provider;

(e) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR Part 441 Subpart B for Medicaid eligible recipients under twenty-one (21) years of age.

(10) [(8)] "Official Compendia" is defined in KRS 217.015.

(11) [(9)] "Orphan drug" means a drug or biological [means] for use in a rare disease or condition[;] and that has been designated an [granted] orphan drug [designation] by the Food and Drug Administration.

(12) ~~[(10)]~~ "Outpatient drug program" means the program of drug services provided directly by a pharmacist to a Medicaid recipient, including both the drug product and dispensing of the drug.

(13) "Pharmacological category" is defined in KRS 205.5632.

(14) "Prescription drug" means a legend drug as defined in KRS 217.015.

(15) ~~[(11)]~~ "Termination date" means the last date, as established by a drug manufacturer, that the drug ~~[determines a national drug code]~~ may be dispensed by a provider.

Section 2. Covered Benefits ~~[Prescribed Drug Coverage]~~ and Limitations Relating to the Outpatient Drug Program. A drug prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner, physician assistant, or podiatrist ~~[in accordance with 907 KAR 1:021]~~ shall be provided in accordance with this administrative regulation.

(1) The drug file shall be maintained in an electronic format and shall be accessed through electronic media via the department's fiscal agent and web site, which may be accessed at:

<http://efcchs.chr.state.ky.us/chs/dms/Drug%20File/extract.doc>.

The prior authorization status shall be specified in an electronic format with the drug file. The drug file shall be updated from a national pharmacy pricing service. A copy of the current drug file shall be filed with the Regulations Compiler and shall be available to the public in accordance with Section 11 ~~[(10)]~~(2) of this administrative regulation. A new drug shall be covered as specified in KRS 205.5632 unless the commissioner documents pursuant to KRS 205.5634(3) that the drug poses a significant safety issue or imposes an inappropriate financial burden upon the Medicaid Program..

(2) The Outpatient Drug Program shall not make payment for:

(a) A drug for which the FDA has issued a "less than effective (LTE)" rating in accordance with 42 USC 1396r-8(k)(2)(A)(ii)-(iii);

(b) A drug which the FDA has determined is "identical, related, or similar to an LTE" drug in accordance with 42 USC 1396r-8(k)(2)(A)(ii)-(iii);

(c) A drug~~;~~ for which the drug manufacturer has not entered into or complied with a rebate agreement in accordance with 42 USC 1396r-8(a), unless there has been a review and determination by the department that it shall be in the best interest of Medicaid recipients for the department to make payment for the nonrebated drug;

(d) A drug that has reached the ~~[which has a]~~ termination date established [issued] by the drug manufacturer;

(e) Nursing facility items as follows:

1. Ace bandage;
2. Alfalfa oil;
3. ~~[Angiocatheter (for IV);]~~ Antiembolism hose;
4. Bedding;
5. Beverages;
6. Bran oil;
7. Chlorophyll;
8. Cleansing agents;
9. Colostomy supplies;
10. Cough drops;
11. Dental rinses;
12. Diabetic supplies;
13. Dressings;
14. Food supplements and supplies related to their administration;
15. Formaldehyde;
16. Gargles;
17. Garlic oil;
18. Gelatin;
19. Glutaraldehyde;
20. Hydrogen peroxide;
21. Iodine;
22. Intravenous catheters and supplies;
23. Kelp;
24. Keratolytic agents;
25. Lecithin tablets;
26. Levine tube;
27. Liniments;
28. Lipotropic agents;
29. Live yeast;
30. Lozenges;

31. Methylsalicylates;

32. Mineral oil;

33. Miscellaneous supplies;

34. Naso-gastric tube;

35. Oat bran;

36. Pigmenting agents;

37. Placebos;

38. Protection items;

39. Povidone iodine swabs;

40. Rubbing alcohol;

41. Sanitary or personal items;

42. Shark liver oil;

43. Skin lubricant lotions and creams;

44. Soaps;

45. Sulphur;

46. Tannic acid;

47. Vinegar;

48. Wheat bran; or

49. Witch hazel;

(f) A drug or drug class ~~[of drug]~~ listed in 42 USC 1396r-8(d)(2) unless it is:

1. ~~[a. Specified within the drug class; and~~

~~b.] Placed on the drug file; or~~

2. Prior authorized ~~[using the prior authorization criteria of the department as specified]~~ in accordance with Section 3(3) of this administrative regulation; or

(g) A drug provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program.

(3) The Outpatient Drug Program shall make payment for a drug:

(a) If medically necessary; ~~[1. For which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a); or~~

2. ~~Which has a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; and]~~

(b) ~~[If [Which is] prescribed for a medically accepted indication, as approved by the FDA or documented in official compendia or peer-reviewed medical literature; and~~

~~(c) If the drug is:~~

1. A drug for which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a);

2. A drug which has a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; or

3. A drug which has an exemption from the department in accordance with subsection (2)(c) of this section.

(4) Limitations within the Outpatient Drug Program.

(a) With the exception of a prescription identified in paragraph (b) of this subsection, a prescription shall not be refilled:

1. More than five (5) times; or

2. More than six (6) months after the ~~[original]~~ prescription has been written.

(b) A prescription requiring a pharmacist to combine more than one (1) active ingredient shall not be refilled more than six (6) months after the ~~[original]~~ date ~~[of]~~ the prescription was first filled.

(c) A recipient placed in lock-in status pursuant to 907 KAR 1:677 shall receive services in accordance with 907 KAR 1:677.

(5) Prescription requirements.

(a) Practitioner authorization shall be evidenced by the actual signature of the prescriber:

1. On each prescription not telephoned to ~~[into]~~ the pharmacy;

2. On a Schedule II controlled substance prescription; or

3. On a prescription in which the prescriber certifies that, in his medical judgment, a specific brand shall be medically necessary for a particular patient. Certification procedures shall be in accordance with 42 CFR 447.332, 42 USC 1396r-8(e) and KRS 217.822, which mandate the following:

a. The certification shall be written in the prescriber's handwriting;

b. The certification shall be written directly on a prescription blank, nursing facility order sheet, or a separate sheet. ~~;~~

~~(i) Prescription blank;~~

~~(ii) Nursing facility order sheet; or~~

~~(iii) A separate sheet.]~~

c. The certification document shall be attached to the original

prescription or order sheet.

d. If the certification has been written on a separate sheet, the name of the recipient and the specific medication shall also appear on the sheet.

e. If more than one (1) drug is written on the prescription blank, the certification shall be written for each drug requested.

f. The certification shall contain the phrase "brand medically necessary" or "brand necessary".

(b) For a telephone prescription, ~~[except as provided in paragraph (a) of this subsection;]~~ the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.

1. If a prescriber indicates that a specific brand is medically necessary, the pharmacy shall inform the prescriber of the need for a handwritten certification [certificate].

2. The certification [certificate] shall be delivered to the pharmacy by the recipient upon receipt of the prescription or mailed to the pharmacist by the prescriber.

3. The pharmacist shall obtain the prescriber's certification no later than forty-five (45) days from the date the prescription is transmitted by telephone.

(c) A prescriber's identification number shall be made available by a prescriber in writing or orally and shall be recorded by the pharmacist prior to dispensing, to identify a prescriber as follows: [Prescriber's license number;]

1. A ~~[Kentucky Medicaid physician shall use his]~~ five (5) digit Kentucky license number for a physician licensed in Kentucky or the state license number that authorizes prescriptive privileges for a physician who practices in another state; [-]

2. A Kentucky ~~[dentist, optometrist, or podiatrist shall use his]~~ license number, including applicable alpha characters for a dentist, optometrist, or podiatrist licensed in Kentucky or the state license number that authorizes prescriptive privileges for a dentist, optometrist, or podiatrist who practices in another state; [-]

3. A Kentucky ~~[advanced registered nurse practitioner (ARNP) shall use his]~~ registration number, including alpha characters for an advanced registered nurse practitioner (ARNP) who is registered and designated to engage in advanced registered nursing practice in accordance with KRS 314.042 or the state registration number or unique personal identification number that authorizes prescriptive privileges for an advanced registered nurse practitioner who practices in another state; [-]

4. A Kentucky ~~[physician assistant shall use his]~~ certification number, including alpha characters for a physician assistant certified to practice in Kentucky or the state certification number or unique personal identification number that authorizes prescriptive privileges for a physician assistant who practices in another state; or [-]

5. The license number of the physician who supervises a physician who does not have a Kentucky state license number on file and who is enrolled in a graduate medical education program. [An out-of-state prescriber shall use his state license number, including alpha characters, up to ten (10) characters.]

6. ~~An out-of-state ARNP or physician assistant shall use his unique personal identification number that authorizes prescriptive privileges in his respective scope of practice.~~

7. ~~A licensed physician, enrolled in an approved graduate medical education program and working under the direct supervision of a licensed practitioner, shall use the license number of the supervising practitioner.~~

(d) Quantity requirements. Except for the following, a [An original] prescription shall be limited to a maximum of thirty (30) day supply; except]:

1. A refill of a maintenance prescription shall not occur less than twenty-three (23) days from the last date the medication was dispensed unless a pharmacist receives a maintenance exception from the department. The pharmacist shall request an exception by completing and submitting a prior authorization request form or calling the department's prior authorization telephone number; [-]

a. ~~Completes a prior authorization request or calls the department's prior authorization telephone number; and~~

b. ~~Requests authorization to refill a prescription before the twenty-three (23) day limit.~~

2. A prescriber may request an exception to the thirty (30) day maximum supply; based on medical specialty best practice standards

and appropriateness of care;] in accordance with the following:

a. [(#)] The prescriber shall call one (1) of the toll-free prior authorization lines and make the request. The fiscal agent shall then notify the dispensing pharmacy of the approval for the exception to the thirty (30) day maximum supply requirement; or

b. [(ii)] ~~"A one (1) month supply shall not be required" shall be handwritten on the prescription and signed by the prescriber.~~ The pharmacist shall call one (1) of the toll-free prior authorization lines and make the request for the exception; and

3. [b.] An approval for a thirty (30) day supply exception shall be applicable for a maximum period of six (6) months [if the need for the drug continues and the patient remains eligible.

(e) ~~A prescription quantity dispensed which is changed from the original prescription shall be authorized by the prescriber.~~

1. The prescriber shall document in the recipient's medical record the following:

a. The authorized changed quantity amount;

b. The reason for the change;

c. ~~Certification that the pharmacist contacted the prescriber and requested the change;~~

d. The name of the pharmacist requesting the change; and

e. The date of the authorization.

2. ~~The pharmacist shall document on the prescription or an attached document the following:~~

a. Authorized changed quantity amount;

b. The reason for the change;

c. ~~Certification that the prescriber has been contacted;~~

d. The name of the prescriber or the name of the office employee who transmitted authorization on behalf of the prescriber;

e. The date of the authorization;

f. The name of the pharmacist; and

g. ~~The prescription number.~~

(e) [(#)] A recipient, not in a nursing home or personal care facility, or his designee;] shall sign for receipt of dispensed [his] medication.

Section 3. Prior Authorization [Process]. (1) A medication which requires prior authorization shall be covered if prior authorization is approved pursuant to the procedures established in this section.

(2) If a drug has been prior authorized, it shall be authorized singularly or as a group for a recipient in a nursing facility bed if the recipient [he] meets the patient status criteria established in 907 KAR 1:022 unless the commissioner requires [or his designee within the cabinet approves the Drug Management Review Advisory Board's (DMRAB) recommendation to require] individual prior authorization, in accordance with drug class parameters.

(3) Procedure for prior authorization.

(a) A request for prior authorization shall be made by the prescriber, the prescriber's designee, or a pharmacist by [or office personnel under his direct supervision, a pharmacist, or pharmacy personnel under his direct supervision, or social worker. The request shall be made by:]

1. Completing a Prior Authorization Request Form MAP-122 and faxing or mailing the form to the department's fiscal agent; ~~A written request shall be made for:~~

a. A maintenance drug;

b. An extension;

c. A change of an existing prior authorization;

d. A transfer of a prescription to another pharmacy; or

e. ~~An approval of a drug authorized by the issuance of a medical card for a retroactive period; or~~

2. A telephone call to the fiscal agent, Monday through Friday (except holidays). The caller shall provide the information from the form MAP-122.

(b) If other clinically-appropriate drugs are available, a basis for denial of prior authorization shall be failure of the prescriber to provide documentation that:

1. Previous drug therapy was unsuccessful;

2. A clinically-significant adverse reaction occurred with previous drug therapy;

3. A clinical contraindication exists for the use of other drugs available without prior authorization;

4. A clinically-significant drug interaction or adverse reaction would reasonably be expected with the use of other drugs available

without prior authorization; or

5. Use of other drugs available without prior authorization would be clinically ineffective. [Prior to requesting a drug which requires prior authorization:

1. A drug not requiring prior authorization shall be prescribed;

2. Verbal or written documentation of unsuccessful drug therapy shall be provided; or

3. Verbal or written documentation of contraindication for use shall be provided.]

(c) The pharmacy initially selected by a recipient who has been placed in the lock-in program in accordance with 907 KAR 1:677 shall remain the provider during the period of the prior authorization unless the department has determined that a valid reason for a change exists, in accordance with 907 KAR 1:677, Section 2.

(d) The maximum period for which a drug shall be prior authorized shall be six (6) months. Renewal of authorization shall be based on medical necessity. [A request for renewal shall be considered if the need for the drug continues.]

(4) Disposition of a prior authorization request.

(a) The fiscal agent ~~(and its medical personnel)~~ shall review and process each prior authorization request ~~(and approve or disapprove it based on official compendia criteria and Section 2(2) of this administrative regulation).~~

(b) ~~If form MAP-122 is not completed in its entirety, the request shall be returned for completion.~~

(c) ~~If the request has been submitted in writing, the provider initiating the request shall be notified of the approval or the denial decision by mail or fax.~~

(d) ~~If the request is made by telephone [has been telephoned in by the pharmacy], the provider shall be notified of the [medication] approval or denial decision [shall be confirmed] at that time.~~

(e) ~~If the medication is to be started within twenty-four (24) hours, based on the date listed on the MAP-122, the pharmacy shall be notified by telephone.~~

(f) ~~If a medication has not been approved pursuant to Section 2(2) of this administrative regulation, the prescriber may request a second review of a denied or pending request by the department. The request for a second review shall include the following:~~

1. A prescriber shall mail or fax to the department a letter explaining the medical necessity of the denied drug ~~[reasons in support of approval of a denied prior authorization].~~

2. The department shall review a request based on medical necessity ~~[or its contracted peer review organization;]~~ in accordance with [42 USC 466.71, shall review a request using] official compendia or medical literature.

3. If approved, the department ~~[fiscal agent]~~ shall notify the pharmacy of the approval.

4. If denied, the requestor of the prior authorization and the recipient for whom the prescription was written ~~[prescriber]~~ shall be notified with the reason for the denial.

(g) ~~Period of coverage:~~ Unless retroactive coverage is requested, the effective date for coverage of a prior authorized drug shall begin on:

1. The begin date indicated on the MAP-122. If no begin date is indicated on the MAP-122, the effective date shall be:

a. The date entered on the MAP-122; or

b. The received date stamped on the MAP-122; or

2. The date a telephone request is received.

(h) ~~[the date the request is postmarked or the date it is received by telephone:]~~ The prior authorization shall remain in effect for an eligible recipient ~~[:]~~

1-] for the approved period of time unless ~~[:]~~

2-] until the recipient becomes ineligible; or

3-] the National Drug Code meets the requirements of ~~[standards established in]~~ Section 2(2)(a) through (d) of this administrative regulation.

(h) Nursing home recipients. Except as provided in subsection (2) of this section, an eligible Medicaid recipient in a nursing facility, meeting Medicaid patient criteria established in 907 KAR 1:022, shall be exempt from the prior authorization process if a form MAP-573 is completed by the facility.

Section 4. Drug Status Review Process for the First Twelve (12)

Months. (1) Except as provided by this section or as excluded by Section 2(2) of this administrative regulation, a drug shall be covered for the first twelve (12) months on the market without prior authorization ~~[except as provided by the provisions of this section or as excluded by Section 2(2) of this administrative regulation].~~

(2) The factors established in subsections (3) and (4) of this section shall be considered by the department in determining whether prior authorization shall be required for a drug during the first twelve (12) months the drug is on the market.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

(a) A hospitalization;

(b) An emergency room visit;

(c) A physician visit; or

(d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the non-prior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;

2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;

3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;

4. The drug is partially or completely reimbursed by Medicare or another ~~[other]~~ payment system; and

5. A generic drug within the same therapeutic class shall not be compared to a brand name drug. Available utilization data shall be used.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);

2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with official compendia and the drug package insert; and

3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

a. Significant adverse events that were not previously known; or

b. Significant morbidity or mortality.

(5) Upon ~~[the department's verbal or written]~~ request by the department, the manufacturer shall provide the ~~[to the department the requested]~~ following information~~[:]~~ within ten (10) working days. The manufacturer may provide the requested information on form DMRAB-001:

(a) Company name;

(b) Brand product name;

(c) Generic name;

(d) FDA approval date;

(e) Date introduced into United States market;

(f) American Hospital Formulary Service therapeutic class and code;

(g) FDA approval class, 1P, 1S, and orphan drugs;

(h) FDA Approved Drug Products therapeutic equivalence code. A copy of the respective page of the Supplement shall be provided;

(i) Patent expiration date;

(j) HCFA rebate drug designation;

(k) FDA approved indication;

(l) Side effects or toxicity;

(m) Name, strength, dosage form, usual daily dose and cost of treatment per day of comparable drugs on drug file;

(n) Specific advantages compared to other available drugs not requiring prior authorization or statement of why this drug should not require prior authorization;

(o) Most used indications, strength, dosage form, package size, National Drug Code number, average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(p) Name, address, FAX number, telephone number, and e-mail address of the manufacturer's contact person [requester];

(q) A statement indicating which drugs currently not requiring prior authorization may be changed to require prior authorization with no appreciable therapeutic loss to patient benefit and no significant dollar cost to the program if this drug is made available without prior authorization; and

(r) If available, clinical and pharmacoeconomic study citations.

(6) After the department has determined that a drug shall require a prior authorization:

(a) The department shall notify the manufacturer of the drug, in writing, that the drug shall require prior authorization;

(b) The notification shall include the reasons for the determination that the drug shall require prior authorization; and

(c) The determination of the department shall be presented [reviewed] at the next DMRAB meeting that has been scheduled to meet at least two weeks subsequent to the date of notification to the manufacturer.

(7) Information concerning Kentucky Medicaid's [the] drug prior authorization [status] process shall be placed on the following [in the department agent's] web site at:

<http://www.uky.edu/OtherOrgs/KyMedicaidDrug>.

Section 5. Drug Status Review Process After the First Twelve (12) Months. (1) After a drug has been on the market for twelve (12) months, the department may conduct an evaluation due to concerns regarding cost or safety.

(2) The factors established in subsections (3) and (4) of this section shall be considered in determining whether prior authorization shall be required for a drug after it has been on the market for twelve (12) months.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

(a) A hospitalization;

(b) An emergency room visit;

(c) A physician visit; or

(d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the nonprior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;

2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;

3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;

4. The drug is partially or completely reimbursed by Medicare or another [other] payment system; and

5. A generic drug shall be compared to a brand name drug to ensure a complete review of the drug class.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);

2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with the official compendia and the drug package insert; and

3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

a. Significant adverse events that were not previously known; or

b. Significant morbidity or mortality.

(5) Upon [the department's verbal or written] request by the department, the manufacturer shall provide [to the department] the requested information identified in Section 4(5) of this administrative regulation.

(6)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee established in

accordance with KRS 205.5638(2).

(b) A person may address the Drug List/Prior Authorization Subcommittee if it is directly related to an agenda item.

(c) The subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial.

(7)(a) The department may seek additional information from any pertinent source regarding a recommendation made by the DMRAB.

(b) Once requested [required] information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within [in] thirty (30) calendar days [regarding the acceptance or rejection of the recommendation of the DMRAB].

(c) Subsequent to the decision, if new documented evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the board in light of the new information.

(7) [(d)] A copy of the written [notification regarding] final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers;

b. DMRAB;

c. Manufacturer; and

d. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the Internet [department agent's] web site specified in Section 4(7) of this administrative regulation [on the Internet].

(8) Information concerning Kentucky Medicaid's [the] drug prior authorization [status] process shall be placed on the following [in the department's agent's] web site at:

<http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>

Section 6. Comparable Drug Review. (1) Prescription drugs on the prior-authorized drug file shall be placed on the nonprior-authorized drug file if the comparable drug criteria of subsections (3) and (4) of this section are met.

(2) A comparable drug review shall be performed by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools include pharmacy, medicine, dentistry, nursing, public health, and allied health.

(3) Based on review of official compendia and peer-reviewed medical literature, the drug shall:

(a) Be within the same pharmacological category;

(b) Have comparable efficacy;

(c) Have a comparable clinical application; and

(d) Have comparable safety standards and lack the undesirable safety profile specified in Section 4(4)(b) of this administrative regulation;

(4) Based on the average wholesale price, the drug shall have comparable cost determined by a review of:

(a) Cost per day of drug therapy;

(b) A complete period of therapy; and

(c) The diagnosis for which the drug is approved.

(5) A drug removed from prior authorization in accordance with the comparable drug criteria of subsections (3) and (4) of this section shall be placed on prior authorization if the comparable drug subsequently becomes prior authorized in accordance with Sections 4, 5, or 7 of this administrative regulation.

(6) Upon request by the department, the manufacturer shall provide the requested information identified in Section 4(5) of this administrative regulation.

(7) If the department determines that a drug shall remain on prior authorization:

(a) The department shall notify the manufacturer of the drug, in writing, that the drug shall remain on prior authorization;

(b) The notification shall include the reasons for the determination that the drug shall remain on prior authorization; and

(c) The determination by the department shall be presented at the next DMRAB meeting for informational purposes.

(8) A copy of the written notification regarding final disposition

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

taken by the department shall be posted to the internet web site specified in Section 4(7) of this administrative regulation.

(9) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at:
<http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>.

[Twenty-four (24) Month Review. (1) Between July 1998 and July 2000, the department shall conduct a review of current drugs requiring prior authorization. The review shall be conducted in accordance with Section 7(5)(b) of this administrative regulation.

(2) The list of drugs and the calendar quarters in which the drug shall be reviewed shall be as follows:

| Fiscal Quarter | Drug Classes |
|----------------|--|
| 1 | Anti-infective Agents |
| | Cardiovascular Drugs |
| 2 | Antidepressants |
| | Antipsychotic Agents |
| | Hormone Replacement Agents |
| 3 | Cephalosporins |
| | Macrolides |
| | Fluoroquinolones |
| | Antihypertensive Agents |
| | Diuretics; Potassium-Sparing Diuretics |
| | Barbiturates |
| | Benzodiazepines |
| | Hydantoins |
| | Succinimides |
| | Miscellaneous Anticonvulsants |
| 4 | Antiarrhythmics |
| | NSAIDs |
| | Nonbenzodiazepine Sedative-Hypnotics |
| 5 | Penicillins |
| | Vasodilators |
| | Opioids |
| | Lithium |
| | Skeletal Muscle Relaxants |
| | Gastrointestinal Agents (Antacids and Antidiarrheals) |
| | NSAIDs (revisited) |
| 6 | Miscellaneous Antibiotics |
| | Antifungals |
| | Miscellaneous Analgesics |
| | Endocrine Agents |
| | Antineoplastics |
| | Electrolyte Replacements |
| | Dental Agents |
| | Miscellaneous Agents (from classes initiated previously) |
| 7 | Enzymes |
| | Antitussives, Expectorants, Mucolytic Agents |
| | Eye, Ear, Nose, and Throat Preparations |
| | Antihistamines |
| | Serums, Toxoids, and Vaccines |
| | Miscellaneous Agents (from classes initiated previously) |
| 8 | Blood Formation and Coagulation |
| | Skin and Mucous Membrane Agents |
| | Vitamins |
| | Miscellaneous Agents (from classes initiated previously) |

(3)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.

(b) A person may address the Drug List/Prior Authorization Subcommittee if it is directly related to an agenda item.

(c) The subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial.

(4)(a) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMRAB.

(b) Once additional documented information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department in thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new documented evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the board in light of the new information.

(d) A copy of the written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers;

b. DMRAB; and

c. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the department agent's web site on the Internet.

(5) Information concerning the drug prior authorization status process shall be placed in the department agent's web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>.

Section 7. Requested Review Process. (1) An interested party requesting a drug status review shall submit a request in writing or electronically to the department.

(2) The department shall forward a written acknowledgment of receipt of the status review request and the current drug status to the requester within ten (10) working days of receipt.

(3) Upon [the department's verbal or written] request by the department, the manufacturer shall provide [to the department] the requested information identified in Section 4(5) of this administrative regulation.

(4) Upon receipt of the requested information from the manufacturer, the department shall initiate the drug status review. The drug status review shall consist of the following:

(a) A determination of whether the reimbursement is excluded in accordance with Section 2(2) of this administrative regulation;

(b) A determination of whether the drug represents a new strength, dosage form, delivery system, or clinical indication comparable to other drugs listed in the Medicaid drug file [line extension not currently requiring prior authorization]; and

(c) A determination of whether the drug has a unique therapeutic indication or has demonstrated a clinically-significant advantage involving adverse side effects or drug interactions. [represents a unique drug, which includes the following:

1. Schedule II/controlled substance;

2. Treatment of HIV/AIDS;

3. Orphan drug;

4. Oral birth control medication; or

5. Other drugs identified through product experience by providers; and upon the advice of the DMRAB.]

(5) The department shall determine if a review of a drug product shall be conducted.

(a) A review shall be performed [prepared] by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools include pharmacy, medicine, dentistry, nursing, public health, and allied health.

(b) A review shall include the following:

1. Comparison to other products on the drug file, including cost;

2. Primary indication for use and therapeutic classification;

3. Prominent advantages and disadvantages of the product;

4. A recommendation regarding prior authorization status of a drug;

5. Discussion of applicable studies from the medical literature; and

6. Discussion of applicable pharmacoeconomic studies.

(6)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.

(b) A person may address the Drug List/Prior Authorization Subcommittee if the subject [it] is directly related to an agenda item.

(c) The Subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850 [61.860], shall be sent to the commis-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

sioner of the department for his approval or denial.

(7)(a) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMRAB.

(b) Once requested [required] information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within [in] thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the DMRAB [board in light of the new information].

(d) A copy of the written [notification regarding] final disposition taken by the department shall be:

1. Forwarded to the:
 - a. Appropriate participating providers;
 - b. DMRAB;
 - c. Manufacturer; and
 - d. Legislative Research Commission to be distributed to appropriate committees; and

2. Posted to the Internet [department agent's] web site specified in Section 4(7) of this administrative regulation [on the Internet].

(8) Information concerning Kentucky Medicaid's [the] drug prior authorization [status] process shall be placed on the following [in the department agent's] web site at:

<http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>

Section 8. DMRAB Open Meeting Procedures. (1) A person may address the DMRAB if:

- (a) The presentation is directly related to an agenda item; and
- (b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be placed on the Internet [department agent's] web site specified in Section 4(7) of this administrative regulation at least five (5) [seven (7)] calendar days prior to the meeting.

Section 9. Appeals Involving Placement of Drugs on Prior Authorization [Process]. (1) [Prior to the decision of the commissioner, a written exception may be filed with] The commissioner shall enter the final decision on a recommendation of the DMRAB in accordance with KRS 205.5639(3).

(2) An appeal of a final decision by the commissioner by a [pharmaceutical] manufacturer of a product [the decision by the commissioner] shall be [conducted] in accordance with KRS 205.5639(5).

(3) The appeal request shall:

- (a) Be in writing;
- (b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received, in hand, by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

(4) The appeal shall be conducted in accordance with KRS Chapter 13B.

Section 10. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11. [40:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form MAP-122, Drug Prior Authorization/Authorization to Bill, 10/98 edition, Department for Medicaid Services;

(b) Form MAP-573, For Drugs Prior Authorized for Nursing Facility Residents, 10/98 edition, Department for Medicaid Services; and

(c) DMRAB-001, Drug Product Information Form-Kentucky Outpatient Drug List, 4/99 edition, Department for Medicaid Services.

(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

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

FILED WITH LRC: December 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001 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 January 16, 2001, 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: Jill Lewis, 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 AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines required to provide pharmacy services to Medicaid eligible recipients.

(b) The necessity of this administrative regulation: This administrative regulation establishes procedures for the Department for Medicaid Services pertaining to pharmacy services and to comply with HB 608 of the 2000 General Assembly pertaining to the establishment of a drug comparability process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation addresses drug reviews, prior authorization requirements, and the appeal process per KRS 205.5631 through 205.5639 including HB 608 codified as KRS 205.5632.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides criteria to conduct drug reviews. This regulation provides the providers and prescribers with the Medicaid guidelines pertaining to prior authorization and covered benefits and limitations to the outpatient pharmacy program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: HB 608 required that a new set of drug review criteria be developed to look at comparable drugs and the other drugs provided to Medicaid recipients in that drug class with regard to efficacy, cost and safety.

(b) The necessity of the amendment to this administrative regulation: The amendment must be made in order to be comply with the requirements of KRS 205.5632.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment contains the criteria for the drug comparability process, as delineated in KRS 205.5632, to conduct drug reviews on comparable drugs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide DMS with criteria to conduct any drug reviews pursuant to KRS 205.5632.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect the entire Medicaid eligible population and all prescribers and pharmacy providers and the

pharmaceutical manufacturers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation may increase the number of drugs that will be available to the Medicaid population without prior authorization.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: The Pharmacy Annual Report prepared by the University of Kentucky College of Pharmacy indicates that pharmacy Medicaid expenditures in FY 2000 increased by 24.6%. This increase is attributable to an increase in the number of Medicaid eligibles, an increase in prescription utilization, price inflation, the introduction of innovative new drugs and changes in drug mix. There are no indications of decline in this rate of growth for FY 2001. The department is unable to determine the fiscal impact of this process on utilization.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fiscal impact to the department is undeterminable. The current fiscal year budget may need to be adjusted to provide funds for implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change of it is an amendment: The fiscal impact to the department is undeterminable. The current fiscal year budget may need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Mental Health/Mental Retardation Services
Division of Mental Health
(Amendment)

908 KAR 2:070. Standards for rape crisis centers.

RELATES TO: KRS 211.600-211.608 [210.410, 210.450, Acts 1992, c. 462, House Bill 468, Part I, G. Human Resources, 52: Cabinet for Human Resources, e. Department for Mental Health and Mental Retardation Services, p. 1984, Commonwealth Budget Final Budget Memorandum, FB-92-94, pages 290, 291, 2e]

STATUTORY AUTHORITY: KRS 211.600(1), 211.602(2), 211.608 [210.450, House Bill 468, Part I, G. Human Resources, 52: Cabinet for Human Resources, e. Department for Mental Health and Mental Retardation Services, Commonwealth Budget Final Budget Memorandum, FB-92-94, pages 290, 291, 2e]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.602(2) requires that a rape crisis center operate in accordance with administrative regulations promulgated by the Cabinet for Health Services to be eligible to receive state funds and other allocations by the cabinet. KRS 211.608 requires the cabinet to promulgate an administrative regulation that specifies procedures for assuring the confidentiality of rape crisis center clients. KRS 211.600(1) requires the Cabinet for Health Services to designate regional rape crisis centers from each area development district which shall be eligible for state and federal funds in accordance with an administrative regulation promulgated by the cabinet. This administrative regulation establishes requirements for rape crisis centers designated by the cabinet. [The Budget Bill and Final Budget Memorandum for Fiscal Biennium 1992-1993 establish the rape crisis centers and appropriate funds for rape victim services program development through the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services. KRS

210.410 and 210.450 require the cabinet to allocate funds to mental health/mental retardation boards, pursuant to approved annual plans and budgets, and by the promulgation of administrative regulations that establish eligibility criteria.]

Section 1. Definitions. (1) ["Advisory committee" means any designated group to whom the governing board may delegate responsibility for recommendation of policy and procedures related to the operation of the rape crisis center. Final approval and accountability shall remain the ultimate responsibility of the governing board.

(2) "Annual plan and budget" means the annual application for funding submitted by each rape crisis center.

(3) "Cabinet" means the Cabinet for Health Services. [Human Resources.

(4) "Department" means the Department for Mental Health and Mental Retardation Services.]

(2) [(5)] "Governing board" or "board" means a [the] board that meets the requirements of KRS 211.604. [of directors vested with the legal responsibility for management of affairs of the rape crisis center.

(6) "Primary service provider" means the agency within each region designated by the cabinet as the primary agency to provide rape crisis services.]

(3) "Mental health discipline" means the practice of:

(a) Psychology, in accordance with KRS Chapter 319;

(b) Social work, in accordance with KRS 335.080 or 335.100;

(c) Psychiatric nursing, in accordance with KRS 202A.011(12)(d);

(d) Marriage and family therapy, in accordance with KRS 335.300 to 335.399;

(e) Professional counseling, in accordance with KRS 335.500 to 335.599; and

(f) Art therapy, in accordance with KRS 309.130 to 309.1399.

(4) [(7)] "Rape crisis center", or "center", means an organization designated by the cabinet in accordance with KRS 211.604(1). [a program which provides crisis intervention and support services to victims of sexual assault and their family members.]

(5) [(8)] "Region" means an area development district created by KRS 147A.050. [the geographic locality determined by the incorporation of the local mental health/mental retardation board authorized under KRS 210.370 and 210.380 and 908 KAR 2:030, Section 2.]

(6) "Regional MHMR board" means a regional mental health and mental retardation board established in accordance with KRS 210.370.

(7) "Sanction" means a restrictive or compulsory action, including:

(a) A prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(b) Withholding of relief;

(c) Imposition of a penalty or fine;

(d) Destruction, seizure, or withholding of property;

(e) Assessment of:

1. Monetary damages;

2. Reimbursement;

3. Restitution;

4. Compensation;

5. Costs;

6. Charges; or

7. Fees; or

(f) Revocation, or suspension of a license.

(8) "Secretary" means the secretary of the Cabinet for Health Services.

(9) "Victim" means:

(a) A person who has been raped or sexually abused;

(b) A family member of a person who has been raped or sexually abused; or

(c) A friend, or other person associated with, a person who has been raped or sexually abused.

Section 2. Designation and Recision of the Designation of a Rape Crisis Center. (1) An organization which has been funded by the cabinet to provide rape crisis services for the state fiscal year ending June 30, 2000 shall be the designated rape crisis center for the region in which it is located, unless the secretary rescinds the designation in accordance with subsection (2) of this section.

(2) The secretary may rescind the designation of a center if he

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

determines that:

(a) It failed to submit a plan and budget which substantiates that it has the capacity to provide the services specified in KRS 211.600 in accordance with Section 16(1) of this administrative regulation;

(b) Its plan and budget is disapproved;

(c) It has failed to operate in accordance with a requirement of this administrative regulation; or

(d) A sanction has been applied against the center.

(3) The cabinet shall notify a center in writing if the secretary rescinds the designation of the center as a regional rape crisis center. The notification shall:

(a) Specify the effective date of the rescission;

(b) Identify the paragraph of subsection (2) of this section upon which the rescission is based; and

(4) Inform the center that it may request an administrative hearing, in accordance with Section 17 of this administrative regulation, to dispute the cabinet's decision.

Section 3. Requirements for a Board. (1) [Section 2. Governing Board of Directors. (1) Each center shall be managed by a governing board so as to allow community involvement in the planning, development and evaluation of its services.

(2) Each governing board shall adopt written bylaws, that specify the: [- The bylaws shall include the:]

(a) Purpose of the center [agency];

(b) [Minimum and maximum number of member positions;

(c) Qualifications for board members;

(c) [(d)] Types of members including:

1. Voting; and

2. Ex-officio;

(d) Procedure for selecting a member;

(e) [Method of selecting members;

(f) Terms of members;

(f) [(g)] Method of filling vacancies;

(g) Names, responsibilities, and composition of committees;

(h) Officers and the duties of officers;

(i) Procedure for [Method of] election of officers [and chairpersons];

(j) An annual meeting date for the election of officers; [and]

(k) Procedures for removing a member; and

(l) Quorum requirements for a board meeting.

(2) [Methods for removal of directors who are excessively absent from board meetings.

(3) The [duties of the] board shall [be to]:

(a) Perform the functions specified in KRS 211.604(2);

(b) Record written [Establish quorum requirements for meetings of the board.

(b) Schedule meetings of the board to be held a minimum of eight (8) times per fiscal year.

(c) Maintain minutes of each meeting of the board. The minutes shall specify the:

1. [which shall contain the] Date and place of the meeting;

2. Names of members present;

3. Matters discussed;

4. [the subject matter discussed and] Actions taken; and

5. [the] Name of the reporter;

(c) Establish the following [- Minutes of each board meeting shall be forwarded to each board member and to the department within thirty (30) days of the meeting.

(d) Create standing committees;

1. Executive;

2. Nominating;

3. Finance;

4. Personnel; and

5. Program planning and evaluation;

(d) Retain minutes of each board meeting for five (5) years; and [of the board to include executive, nominating, finance, personnel, staff development and training, and program planning and evaluation committees. At the discretion of the board, the functions of one (1) or more of these committees may be assumed by one (1) committee.]

(e) Establish written policies and procedures for the center, [restrictions on reimbursement of members of the board including the prohibition against any member contracting with the board to perform

personal or professional services.

(4)(a) If the rape crisis center is a program of another entity, the governing board of that entity shall appoint an advisory committee.

(b) A minimum of one (1) member of the board shall be appointed to serve on the advisory committee of the rape crisis center.

(c) The advisory committee shall adhere to the requirements of the board as outlined in this section.]

(3) The written policies and procedures established in accordance with subsection (2)(e) of this section shall include:

(a) Procedures which preserve the confidentiality of individual client records in accordance with applicable laws and administrative regulations; and

(b) A requirement that a person who provides a service shall assert, and maintain all the privileges conferred upon the person by federal and state laws and regulations applicable to:

1. The confidentiality of client records; and

2. The disclosure of personally identifying information about a victim.

(4) A board shall not contract with a member of the board to perform personal or professional services.

Section 4. [3.] Personnel Administration [Management]. (1) A center shall establish a personnel file [shall be maintained by the center] for each employee which shall include: [-

(2) The minimum contents of the personnel file shall include:]

(a) An application for employment;

(b) Documentation that the employee meets the qualifications for the position the employee holds, which are specified in Sections 5(2), (4), and 6 of this administrative regulation; and

(c) [Professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;

(c) A document containing conditions or terms of employment;

(d) A personnel action form reflecting any change in status of employee, such as salary change, promotion, resignation or termination; and

(e) A position description which specifies the:

1. [including] Title of the position;

2. [description of] Duties of the position; and

3. [- and requirements of] Training and experience required [necessary] to qualify for the position.

(2) The board shall establish [(3)] personnel policies which govern [shall be established by the center.

(4) The minimum contents of personnel policies shall include:]

(a) Attendance and leave [policies];

(b) Compensation [plan];

(c) Fringe benefits;

(d) Circumstances which disqualify a person from serving as:

1. An employee;

2. A contractor; or

3. A volunteer;

(e) Minimum qualifications of a volunteer; [-Hiring and firing practices;

(e) Staff development and continuing education provisions;]

(f) Employee grievance procedures;

(g) Employee performance evaluations; [and]

(h) Equal opportunity employment;

(i) Requirements for the submission of documentation by an applicant which demonstrates the qualifications of an applicant;

(j) A requirement that an applicant submit documentation of a sanction previously imposed or pending, against the applicant's licensure or certification; and

(k) Procedures for verifying an applicant's qualifications.

(3) The policies required by subsection (2)(d) of this section shall disqualify a person specified in paragraph (d) of this subsection from performing a client service, if the person has been:

(a) Convicted of a sex crime defined in KRS 17.165; or

(b) Convicted as a violent offender as defined in KRS 17.165.

(4) A center shall conduct a criminal records check on:

(a) An applicant for a paid or volunteer position which includes a duty to provide services to a victim; and

(b) A prospective contractor, if the contract is to provide services to a victim.

(5) A center shall maintain a list of persons with whom it contracts to provide therapy services.

(6) A center contract for performance of a service or an administrative function shall provide that the cabinet shall have access to the contractor's facilities, staff and records, which are necessary for the cabinet to determine the contractor's performance.

(7) If a center contracts for performance of therapy services, the contract shall specify requirements for:

- (a) Individual client records;
- (b) Documentation of services performed;
- (c) Confidentiality of client related information;
- (d) Specialized training required of the therapist concerning the treatment of victims;
- (e) The fees that may be charged to a client; and
- (f) Disclosure by a contractor of a sanction imposed during the period of the contract.

Section 5. Required personnel. (1) [statements:

(5)] The governing board shall employ an administrative director who [one (1) staff person as executive/program director of the rape crisis center. The executive/program director] shall:

- (a) Be responsible for financial management of the center[, including budgets and grant writing];
- (b) Supervise the performance of [duties and activities of] all staff and volunteers;
- (c) Coordinate the design and delivery of sexual abuse [assault] intervention services;
- (d) Fulfill other [all] duties assigned [as required] by the governing board; and
- (e) Report directly [or through supervision] to the board on all center activities[; and
- (f) Be a clinical or administrative director, as determined by the board].

(2) The qualifications of an administrative director shall be: (a) A masters degree from an accredited college or university; or

(b) A bachelors degree from an accredited college or university, and three (3) years of administrative experience.

(3) The board shall employ [(6)(a)] a clinical director who:

- (a) Shall perform clinical supervision of staff that provide direct client services;
- (b) Shall ensure that a person who provides direct client services meets applicable requirements of the professional board which has the authority to regulate the person's practice; and
- (c) May provide direct client services.
- (4) [shall have the duties and responsibilities established in subsection (5) of this section:

(b) A clinical director shall provide direct client services:

(c) The qualifications of a [requirements for] clinical director shall be:

- (a) A [include a:
 - 1-] masters degree from an accredited college or university; and
 - (b) Possession of a certificate or license to practice in a mental health discipline, under the laws of the Commonwealth of Kentucky.

(5) A single individual may serve as an administrative director and a clinical director if the individual meets the requirements of this subsection and subsection (2) of this section.

(6) The board shall employ or contract for personnel to provide the services required by KRS 211.600(3).

Section 6. Qualifications of Service Providers. (1) A person who performs a crisis telephone service shall receive forty (40) hours of training on issues relevant to crisis intervention services to a victim.

(2) A person who performs a crisis counseling service shall:

- (a) [in counseling or clinical psychology, social work, nursing, or a related field with a counseling or clinical focus; or
 - 2- Bachelors degree in one (1) of the fields specified in this paragraph, with five (5) years of counseling or clinical experience.

(7)(a) An administrative director shall have the duties and responsibilities established in subsection (5) of this section:

(b) An administrative director shall not provide clinical supervision to center staff who provide direct client services:

(c) An administrative director may provide direct service client services if she meets the requirements for a crisis intervention coun-

selor established in subsection (9) of this section:

(d) An administrative director may provide direct client services if center staff who provide direct client services are unavailable:

- (e) The requirements for an administrative director shall include a:
 - 1- Masters degree in administration or human services; or
 - 2- Bachelors degree and three (3) years administrative experience;

(8) A center that employs an administrative director shall also employ a client services coordinator who shall:

- (a) Provide direct client services;
- (b) Provide clinical supervision to center staff who provide direct client services;
- (c) Provide program management consultation; and
- (d) Meet the educational and experience requirements for a clinical director established in subsection (6) of this section:

(9) A board may establish the staff positions specified in this subsection, if it determines they are required to provide the services established in Section 4 of this administrative regulation:

(a) Crisis intervention counselor. A crisis intervention counselor shall:

- 1- Provide short-term counseling and advocacy related to the immediate crisis that results from sexual abuse or assault;
- 2-] Receive clinical supervision by the clinical director;
- (b) [client services coordinator; and
- 3-] Have a bachelors degree from an accredited college or university; and

(c) Participate in forty (40) hours of training on sexual assault issues within (3) three months of employment.

(3) Eight (8) hours of the training required by subsection (2)(c) of this section shall occur prior to the performance of a crisis counseling service.

(4) A person who performs a therapy service shall:

- (a) Have a certificate or license to practice a mental health discipline under the laws of the Commonwealth of Kentucky;
- (b) [in counseling, clinical psychology, social work, a related field, or two (2) years of counseling experience;
- (b) Volunteer coordinator. A volunteer coordinator shall provide direct supervision to a person who volunteers to provide services for a center:

(c) Therapist. A therapist shall:

- 1- Provide psychotherapy that may address recent or past sexual assault; and
- 2-] Have a masters degree from an accredited college or university in a mental health discipline;
- (c) Have one (1) year of [in counseling, clinical psychology, social work, a related field with counseling or clinical focus, and three (3) years] counseling or clinical experience; and

(d) Participate in forty (40) hours of training on sexual assault issues within three (3) months of employment.

(5) Eight (8) hours of the training required by subsection (4)(d) of this section shall occur prior to the performance of a crisis counseling service.

(6) A person who supervises medical advocacy or legal advocacy services shall:

- (a) Have a bachelors degree from an accredited college or university;
- (b) Participate in forty (40) hours of training on issues related to sexual assault, within three (3) months of employment; and
- (c) Meet the definition of a victim's advocate in KRS 421.570.

(7) Eight (8) hours of the training required by subsection (6)(b) of this section shall occur prior to the performance of a medical or legal advocacy service.

(8) A person who supervises a volunteer shall have:

- (a) A high school diploma; and
- (b) Five (5) years of volunteer or work experience.
- (9) A person who performs a volunteer service shall:
 - (a) Be twenty (20) years of age;
 - (b) Participate in forty (40) hours of training related to sexual assault prior to performing a volunteer service; and
 - (c) Be qualified in accordance with the requirements of this section which apply to the services that the volunteer is assigned to provide.

(10) A person who performs a public education service shall:

- (a) Have a bachelors degree from an accredited college or univer-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

sity; and

(b) Participate in forty (40) hours of training on issues related to sexual abuse, within three (3) months of employment.

(11) Eight (8) hours of the training required by subsection (10)(b) of this section shall occur prior to the performance of a public education service.

(12) [(d)] The qualifications specified in subsections (1) through (11) of this section [established in paragraphs (a) through (c) of this subsection] shall not apply to an employee [center staff] hired or a contractor engaged prior to the effective date of this administrative regulation if the employee or contractor meets the requirements that were in effect at the time the employee was hired or the contractor was engaged.

(13) A person who provides services shall participate in at least eight (8) hours of continuing education annually.

[(e) Within three (3) months of employment, a crisis intervention counselor, a volunteer coordinator, and a therapist shall have received forty (40) hours of training on issues related to sexual assault.

(f) A staff member shall receive at least ten (10) hours of the training required by paragraph (e) of this subsection before providing services to clients.

(g) Prior to serving as a volunteer, a person shall have received forty (40) hours of training related to sexual abuse and assault.]

Section 7. Requirements for Crisis Services. [4. Services.] (1) A rape crisis center shall assure that the following crisis services are available to victims twenty-four (24) hours a day, seven (7) days a week:

(a) A toll-free [;

(a) Provide the services specified in subsections (2) through (5) of this section; or

(b) Refer clients to a provider of these services.

(2) Crisis intervention services. Crisis intervention services shall:

(a) Be immediately available to victims of sexual abuse and assault twenty-four (24) hours a day; and

(b) Include the following:

1. A crisis telephone line with a TTY feature; and

(b) [;

2. Crisis counseling services[; and

3. Accompaniment to medical or legal services related to the abuse or assault].

(2) A victim who calls the crisis telephone service shall not be required to identify himself or herself.

(3) A center shall establish policies and procedures for the operation of the crisis telephone service required by subsection (1)(a) of this section which specify conditions under which an employee or volunteer who answers a crisis call shall contact a supervisor.

(4) The policies and procedures required by subsection (3) of this section shall require that a supervisor be contacted if:

(a) A caller seems to present a danger to self or others;

(b) A caller is in danger; or

(c) Contact with law enforcement may be appropriate.

(5) A person who responds to a crisis telephone call outside the center's regular business hours shall inform the center no later than the close of business on the following business day.

(6) A call that alleges or provides evidence of abuse, neglect, or exploitation shall be reported in accordance with:

(a) KRS 620.030, if applicable; or

(b) KRS 209.030, if applicable.

(7) The center shall document each crisis telephone call in a log. Documentation shall include:

(a) The time, date, and purpose of the call;

(b) The name of the caller if voluntarily given;

(c) A referral made as a result of the call, if any; and

(d) Other action recommended by the employee or volunteer who answered the call, if any.

(8) Face-to-face crisis counseling services shall be available during the regular business hours of the center and, at other hours, by appointment.

(9) A center shall not charge a recipient of crisis counseling services for three (3) or fewer visits.

(10) A center may charge a fee to a client for crisis counseling services except as prohibited by subsection (9) of this section.

(11) If a client needs or requests services in addition to the counseling visits provided at no cost in accordance with subsection (9) of this section, the center shall:

(a) Provide the needed or requested services; or

(b) Refer the client to another practitioner who, or agency which, provides the needed or requested services.

(12) Crisis counseling services shall include accompaniment to medical or legal services related to abuse or assault if requested by the victim.

Section 8. Requirements for Mental Health and Related Support Services. (1) Mental health and related support services shall include:

(a) Therapy;

(b) Information; and

(c) Referral services.

(2) Therapy may include:

(a) Individual psychotherapy;

(b) Family psychotherapy;

(c) Group psychotherapy; and

(d) Medication management.

(3) Therapy shall be available during regular business hours of the center.

(4) The center may charge a reasonable fee for therapy.

(5) A center shall maintain a record of current information about financial, medical, mental health, social services, and other resources for the referral of a victim.

Section 9. Requirements for Advocacy Services. (1) Advocacy services shall include legal advocacy services and medical advocacy services.

(2) Advocacy services shall be available twenty-four (24) hours a day, seven (7) days a week, at no cost to a victim.

(3) Advocacy services which are provided outside regular business hours shall be documented no later than the close of business, the following business day.

(4) The center shall establish a protocol for advocacy services, that lists the conditions under which a person who provides advocacy services shall contact a supervisor.

(5) Legal advocacy services shall include:

(a) Accompaniment of a victim to a court proceeding or a meeting with law enforcement or a criminal justice agency; and

(b) The provision of education to a victim regarding:

1. How the legal system operates; and

2. The Victims Bill of Rights specified in KRS 421.500 to 421.575.

(6) Legal advocacy services shall be limited to support and education, and shall not include offering legal advice or otherwise engaging in the practice of law, unless the service is provided by a licensed attorney;

(7) Medical advocacy services shall include:

(a) Accompaniment of a victim to a forensic rape examination or other medical care necessitated by the sexual assault; and

(b) Education to a victim regarding how the health care system operates.

Section 10. Requirements for Consultation Services. (1) Consultation services shall include:

(a) Consultation related to a victim; and

(b) Consultation about the design of a program to assist a victim.

(2) Consultation on behalf of a victim shall be:

(a) Available twenty-four (24) hours a day, seven (7) days a week at no cost; and

(b) Provided under conditions that protect a victim's confidentiality.

(3) The center shall obtain written permission for release of information from the victim prior to disclosure of personally identifying information.

Section 11. Requirements for Public Education Services. (1) Public education services shall include:

(a) Prevention;

(b) Risk reduction;

(c) General information;

(d) Training programs regarding rape or sexual abuse or related issues for schools, community groups, or professionals; and

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(e) Development or distribution of written materials which provide information on:

1. Rape and sexual abuse; and
2. How to contact the center for services.

(2) Public education materials shall be prepared for an audience that is diverse in religion, race, disability, culture, and sexual orientation.

(3) A center shall evaluate its public education programs using information from education program participants.

Section 12. [(3) Support services:

(a) Support services shall be available to assist victims of sexual abuse and assault to recover:

(b) Support services shall include:

1. Legal and medical advocacy;
2. Information and referral;
3. Case management;
4. Family support; and
5. Support group services.

(4) Consultation and education services:

(a) Consultation and education services shall be available to:

1. Increase community awareness of sexual abuse and assault; and
2. Improve the ability of professionals to provide services to persons who have been sexually abused and assaulted.

(b) Consultation and education services may include:

1. School-based prevention programs;
2. Community education programs;
3. Media presentations;
4. In-service training; and
5. Case consultation services.

(5) Clinical services. Clinical services related to the mental health needs of victims of sexual abuse and assault shall:

(a) Be provided by professionals who meet the requirements of the therapist position established in Section 3(9)(c) of this administrative regulation; and

(b) Include individual, couple, family, and group therapy services.

(6) Volunteer Program. [network:] A rape crisis center shall maintain a roster of volunteers who may [an active volunteer network to] assist with the provision of:

- (1) Direct services to victims of sexual abuse and assault; and
- (2) Administrative [indirect] services for the center.

Section 13. [(7)] Client Files. (1) A center shall document each service provided.

(2) The documentation required by subsection (1) of this section shall include:

- (a) The date a service is performed;
- (b) The recipient of the service;
- (c) The type of service; and
- (d) The name and title of the service provider.

(3) [(a)] A rape crisis center shall establish a [open a client] file for each victim [of sexual abuse and assault] who is provided a therapy service. The [excluding service that is limited to a telephone conversation:

(b) A client] file shall include:

- (a) [1:] A current service plan that identifies [details] the services needed by the victim; and
 - (b) [2:] A statement of the goals for intervention.
- (4) [(e)] A client file shall be confidential, except as otherwise provided by applicable law.

Section 14. [(8)] Client Satisfaction and Grievances. (1) A rape crisis center shall establish a written grievance procedure that shall:

(a) Be given to each client that comes to the center for services; [and]

- (b) Contain a description of the[services provided by the center; and

(c) Specify the [2:] procedure for filing a client grievance.

(2) A center shall, annually, evaluate the level of client satisfaction with its services, using information provided by clients.

Section 15 Monitoring. (1) The cabinet may monitor and conduct

program reviews related to:

(a) The quality of a center's services;

(b) Compliance with the requirements of this administrative regulation;

(c) Implementation of a center's approved plan and budget; and

(d) A sanction previously imposed, if any.

(2) Monitoring may include:

(a) Review of client records;

(b) Review of a report submitted to the cabinet;

(c) On-site visit for technical assistance or consultation;

(d) Interviews with the following persons, if they agree to participate in an interview:

1. A center employee;

2. A contract service provider;

3. A volunteer; or

4. A victim; and

(e) Investigation of a problem or complaint.

(3) A rape crisis center, and a subcontractor of a rape crisis center, shall grant the cabinet reasonable access to its facilities, staff, and records.

(4) The cabinet, in its monitoring and review in accordance with subsection (1) of this section, shall preserve the confidentiality of a client record in accordance with Kentucky Rules of Evidence (KRE) 506, and 507, 902 KAR 20:091, Section 3(4)(c), KRS 214.185, and 194A.060.

Section 16. [5:] Funding. (1) A center which is designated as a regional rape crisis center in accordance with Section 2 of this administrative regulation shall submit the [The Primary Service Provider shall be the regional mental health/mental retardation board, unless the provision of services for victims of sexual abuse and assault has been contracted by the board to a nonprofit agency that has been approved by the cabinet:

(2) The agency designated as the primary service provider shall remain the primary service provider, unless its designation has been rescinded by the department after a review by the department of the agency's:

(a) Performance; or

(b) Annual plan and budget proposal for funding for the next fiscal year.

(3) A primary service provider shall submit an annual plan and budget proposal on] "Funding Application for Rape Crisis Centers and Rape Victim Services Programs" no later than ninety (90) days prior to the beginning of the period for which funds are requested.

(2) A center shall be eligible to receive state funds and other allocations from the cabinet upon the secretary's approval of a funding application submitted in accordance with subsection (1) of this section.

Section 17. Administrative Hearing Procedure. (1) A request for an administrative hearing shall be received by the cabinet no later than thirty (30) days after the date of the notice required by Section 2(3) of this administrative regulation. The request shall:

(a) Identify the disputed decision; and

(b) State the basis on which the secretary's decision is believed to be unwarranted or erroneous.

(2) An administrative hearing shall be conducted by a hearing officer who is knowledgeable of cabinet policy.

(3) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(4) A request for a hearing shall be considered to be abandoned, if the appellant does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled.

(5) A center may withdraw a request for an administrative hearing by:

(a) Notifying the hearing officer in writing, that the center wishes to withdraw the request; or

(b) Stating on the record, at the hearing, that the center withdraws the request.

Section 18. Material Incorporated by Reference. (1) The [form:

(4)(a)] "Funding Application for Rape Crisis Centers and Rape Victim Services Programs (July 1993)" form is incorporated by reference.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(2) This material [(b)-(4)] may be obtained, inspected, or copied, subject to applicable copyright law, at the Division of Mental Health, Department for Mental Health and Mental Retardation Services, Cabinet for Human Resources, Leestown Square, 4th Floor, Fair Oaks Lane, Frankfort, KY 40601, 8 a.m. through 4:30 p.m., Monday to Friday.

[Section 6. Audit and Monitoring. (1) The department, and a regional mental health/mental retardation board that has contracted with a rape crisis center, shall audit, monitor and conduct program reviews related to the quality of care provided by a rape crisis center.

(2) In order to perform the duties imposed by subsection (1) of this section, a rape crisis center shall grant reasonable access to its property and records.]

MARGARET PENNINGTON, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held January 23, 2001 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001 at least five (5) working days prior to the date of the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (FAX).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Littlefield, Department for Mental Health and Mental Retardation Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates regional rape crisis centers, and establishes requirements for governance, staff qualifications and operation of regional rape crisis centers.

(b) The necessity of this administrative regulation: The administrative regulation is needed in order to implement the amendments to KRS 211.600-608 enacted by the 2000 General Assembly, and to specify service standards for the operation of regional rape crisis centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.602 requires that rape crisis centers shall comply with administrative regulations to be eligible for funding. KRS 211.608 requires the cabinet to establish monitoring procedures and confidentiality of client related information. This administrative regulation specifies how regional rape crisis centers are designated, the governance requirements for the regional rape crisis centers, standards for staff qualifications and services, and cabinet monitoring procedures including requirements for the confidentiality of client records.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assures statewide availability of rape crisis services through the designation of regional rape crisis centers. Standards for governance, duties of governing board members monitoring procedures and confidentiality requirements are specified. Requirements for staff qualifications assure competent provision of the services required by KRS 211.600. Requirements for the confidentiality of client records and department monitoring protect the privacy of clients who participate in rape crisis center programs as required by KRS 211.608.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This administrative regulation amends the procedure for the designation of a rape crisis center, amends requirements for governing boards of regional rape crisis centers, increases the stringency of requirements for staff qualifications, specifies applicable confidentiality requirements for client records, and specifies requirements for cabinet monitoring.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is needed to implement the requirements of KRS 211.600-608 enacted by the 2000 General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.600-608 requires the Cabinet for Health Services to promulgate an administrative regulation that details procedures for the designation and governance of regional rape crisis centers, as well mechanisms for ensuring client confidentiality.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation specifies procedures for designating a regional rape crisis center and the services a center shall provide, in accordance with KRS 211.600, funding requirements in accordance with KRS 211.602, standards for governance in accordance with KRS 211.604, and monitoring and confidentiality in accordance with KRS 211.608.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact governing boards, staff, and clients at each of the 13 regional rape crisis centers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment establishes requirements for selection of board members, and the duties and responsibilities of board members. It establishes requirements for staff qualifications related to the services a staff person, a contractor, and a volunteer performs. Confidentiality requirements will protect the privacy of client related records and information.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds to support regional rape crisis centers are allocated by the Cabinet for Health Services through annual appropriations by the Kentucky General Assembly and from federal Preventive Health Services Block Grant funding. No additional funding will be needed as a result of this amendment to the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is applied to training requirements. The requirements for training staff who answer telephone crisis lines are less stringent for programs operated by regional mental health and mental retardation board than for independently operated programs. Crisis telephone services operated by the regional mental health and mental retardation boards have more extensive capacity for supervision and professional support of telephone crisis workers than the typical independent program does.

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

921 KAR 1:410. Child support collection and distribution.

RELATES TO: KRS 67A.620, 95.620, 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 403.215, 405.060(2), (3), 405.405, 405.430-405.510, 405.467(4), 407.5101-407.5701, 427.120, 427.125, 45 CFR 302.32, 302.38, 302.51-302.54, 302.60, 302.65, 303.6, 303.100-303.102, 303.104, 15 USC 1673, 42 USC 654, 654(4)A [654A], 666(a)(1)-(4), (6)-(12), (14)-(17), (19), 666(b)

STATUTORY AUTHORITY: KRS 15.055(2), 194B.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, 407.5102, 407.5310(2)(d), 42 USC 654, 654(4)A [654A], 666(a)(1)-(4), (6)-(12), (14)-(17), (19), 666(b)[EØ-98-731]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2)(f) requires the cabinet to collect [establish] and enforce child support obligations. This administrative regulation establishes procedures for collection and distribution of child support payments, including means of enforcement and management of disputes and appeals.

Section 1. Collection of Spousal Support. The cabinet shall collect spousal support if spousal support meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Collection. (1) Income withholding.

(a) Shall be used:

1. As the primary tool for collection of child support; and
2. If necessary to facilitate enrollment of a child in a health insurance plan available through an obligor's employer.

(b) An obligor shall inform the cabinet of his current employer or source of income and his access to health insurance, and of changes to either.

(c) Pursuant to KRS 405.060, if an obligor transfers or assigns income or income-producing property after he has received notice that he has a child support obligation, the cabinet shall take action to obtain:

1. Judicial nullification of the transfer; or
2. A settlement in favor of the creditor.

(d) If current support and an arrearage amount are [is] subject to withholding and a court has not set an amount for an arrearage payment, the arrearage payment shall be determined by multiplying the currently-ordered obligation by twenty-five (25) percent, if the order was issued in Kentucky and Kentucky has exclusive continuing jurisdiction.

(e) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(f) If the address of the obligor is unknown and the cabinet is unable to comply with the notice provisions of KRS 405.467(4), the cabinet shall provide notice of withholding within fifteen (15) calendar days of locating the obligor.

(g) The notice shall inform the obligor that:

1. He has ten (10) days from the date withholding is implemented to contest the withholding; and
2. If he does not contest, withholding and ordered health care coverage shall apply to the current and any subsequent employer.

(h) The cabinet shall notify the employer or other income source, within fifteen (15) days of the request for income withholding, of the following:

1. The employer or other income source shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed;
2. The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:
 - a. A child support payment to the state disbursement unit in the child support agency;
 - b. A medical insurance premium to the health insurance carrier;
3. The employer or other income source shall include on the

transmittal to the cabinet the obligor's name, Social Security number, and cabinet-assigned case number, and the date the money was withheld;

4. The employer or other income source shall withhold at least once monthly;

5. The employer or other income source may combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by name, Social Security number, and cabinet-assigned identification number; and

6. If the obligor terminates employment, the employer or other income source shall notify the cabinet promptly, and shall provide the information required by KRS 405.465(5).

(2) Allocation of income withheld payments in IV-D and non-IV-D cases.

(a) The cabinet shall prorate an income withheld payment among an obligor's cases that include an income withholding order by:

1. Totalling the obligor's current support obligations subject to income withholding;

2. Dividing each current support obligation by the total amount from subparagraph 1 of this paragraph, to determine a percentage; and

3. Multiplying the withheld payment received from the employer by the percentage from subparagraph 2 of this paragraph, to determine the portion of the payment to be applied to each current support obligation subject to income withholding.

(b) The cabinet shall allocate the prorated payment amount determined in paragraph (a)3 of this subsection to each of the obligor's current support obligation amounts subject to income withholding.

(c) When the obligor's current support obligations subject to income withholding are satisfied for the current month, the cabinet shall prorate a remaining income withholding amount among the obligor's ordered arrears obligations subject to income withholding by:

1. Totalling the obligor's ordered arrears obligations subject to income withholding;

2. Dividing the monthly arrears obligation for each child support case by the total amount from subparagraph 1 of this paragraph, to determine a percentage; and

3. Multiplying the remaining income withholding amount by the percentage from subparagraph 2 of this paragraph, to determine the portion of the payment to be applied to each arrears obligation subject to income withholding.

(d) The cabinet shall allocate the prorated payment amount determined in paragraph (c)3 of this subsection to each of the obligor's arrears obligations subject to income withholding.

(e) When the obligor's current support and arrears obligations subject to income withholding are satisfied for the current month, the cabinet shall prorate and allocate a remaining income withheld amount proportionately according to paragraphs (a) and (b) of this subsection.

(3) Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the Division of Unemployment Insurance [state employment security agency], shall collect a child support payment from an obligor receiving unemployment compensation if the Division of Unemployment Insurance [state unemployment security agency] has commenced withholding on one (1) of the following bases:

1. An obligor with a child support delinquency has voluntarily signed an agreement to withhold child support payments from his unemployment compensation benefits; or

2. An obligor, within fifteen (15) calendar days after he received an agreement from the cabinet, has failed to:

- a. Sign an agreement to withhold; or
- b. Contest the validity of the child support obligation.

(b) No more than fifty (50) percent of the obligor's unemployment benefit shall be withheld unless:

1. Ordered by a court of competent jurisdiction; or
2. Requested by the obligor.

(4) [(3)] Federal income tax refund offset and administrative offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if there is:

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

1. A court-ordered or administratively-established support obligation;
2. An assignment of support to the cabinet;
3. An arrearage of at least \$150 delinquent for at least three (3) months; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if:

1. The cabinet is enforcing a court-ordered or administratively-established support obligation;

2. The cabinet has verified the accuracy of the obligor's name and Social Security number;

3. The nonpublic assistance arrearage owed is equal to or greater than \$500, exclusive of fees, court costs, or other nonchild-support debt;

4. The cabinet has a copy of the:

- a. Current support order; and
- b. Payment record or affidavit signed by the custodial parent attesting to the amount of support paid; and

5. The arrearage is owed on behalf of a child who is a minor as of December 31 of the year in which the case is submitted for offset.

(c) A case submitted for federal tax refund offset shall be subject to federal administrative offset of nonexempt federal payments. Non-exempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(5) [(4)] State income tax refund offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if: [A public assistance case for past-due K-TAP, foster care, or medical support shall qualify for offset if:]

1. There is an arrearage on a legally established child and medical support obligation;

2. The obligor's name and Social Security number are known; [The medical support order includes the specific dollar amount;]

3. The arrearage has been verified as accurate; and

4. [The obligor's name and Social Security number are known;

4. The arrearage has been verified as accurate; and

5. The amount of the arrearage is at least \$150.

(b) A nonpublic assistance support arrearage shall qualify for offset if the case [it] meets the criteria specified in subsection (4) [(3)](b) of this section, and the required arrearage amount is not less than \$150.

(6) Tort claim settlements and administrative offset.

(a) The cabinet shall:

1. Identify a child support case for administrative offset when a child support case meets the criteria specified in subsection (4)(a) or (b) of this section;

2. Send to an obligor an "Advance Notice of Intent to Collect Past-Due Support"; and

3. Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in subparagraph 1 of this paragraph.

(b) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing within thirty (30) days of receiving the "Advance Notice of Intent to Collect Past-Due Support".

(c) When an administrative payment is intercepted by the Finance and Administration Cabinet:

1. A payment shall be forwarded to the CSP and distributed according to applicable provisions of Section 3, 4, 6, or 8 of this administrative regulation; and

2. An obligor shall be sent a notice advising that:

(i) The obligor's administrative payment has been intercepted and forwarded to the CSP due to past-due support; and

(ii) The obligor may appeal based on a mistake of fact.

Section 3. Kentucky Transitional Assistance Program and Kinship Care Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP or Kinship Care recipient shall be:

(a) Payable to the Division of Child Support [~~state disbursement unit in the child support agency~~]; and

(b) Reported to the K-TAP and Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to the recipient.

(2) Upon receipt of a notice of payment, the K-TAP or Kinship Care agency shall redetermine eligibility for assistance [K-TAP] payments and report the result to the child support agency.

(a) If the K-TAP or Kinship Care case [family] becomes ineligible, the child support agency shall:

1. Distribute at the end of the month the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 921 KAR 1:380, Section 4(2).

(b) [~~If the family remains eligible, or if a hearing is requested,~~] The child support agency shall distribute the collection as specified in Section 6 of this administrative regulation if:

1. A hearing is requested; or

2. The case remains eligible for assistance.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the Division of Child Support [~~state disbursement unit~~]; and

(2) Distributed and disbursed to the foster care agency.

Section 5. Distribution of Tax Refund Intercept Amounts and Appeal Process. (1) A federal tax refund intercepted in a public assistance account shall be: [-]

(a) [~~Amounts collected shall be~~] Applied to assigned arrearage and forwarded to the public assistance agency within thirty (30) calendar days of the date of initial receipt; [-]

(b) If no assigned arrearage remains, the amount collected shall be:

1. Distributed to the family within thirty (30) calendar days, unless a joint income tax return has been filed; or

2. Held by the cabinet for six (6) months before being distributed [-]; if a joint income tax return has been filed, before being distributed; or

2. Forwarded to the K-TAP family or foster care agency within thirty (30) calendar days of the date of initial receipt.

(2) A federal tax refund intercepted for [in] a nonpublic assistance account shall be: [-]

(a) [~~Amounts collected shall be~~] Applied to assigned arrearage; or [-]

(b) If no assigned arrearage remains, the amount collected shall be:

1. Held by the cabinet for six (6) months, if a joint income tax return has been filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) A state tax refund intercepted for a public [in-an] assistance account shall be distributed according to applicable provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever is applicable.

(4) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing in accordance with KRS Chapter 13B. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor's appeal, forward the ordered amount to:

(a) The obligor, if resolution was in his favor; or

(b) The agency or family, if resolution was against the obligor.

Section 6. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support was received.

(2) In a K-TAP or Kinship Care case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and shall be distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family.

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Income Withholding Distribution. (1) The date of collection for a child support or medical support payment made through income or other withholding shall be the date the income is received by the child support agency.

(2) Distribution of income withholding collections shall be made according to provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever section is applicable.

Section 8. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 9. Financial Institution Data Match. (1) The cabinet shall, when conducting a data match with a financial institution for the purpose of locating a delinquent obligor's assets:

(a) Use the following criteria to identify a case for submission:

1. The obligor owes an arrearage equal to six (6) months obligation or \$1,000, whichever is less; and

2. The obligor is not complying with the most recent [current] support order;

(b) Issue the Order to Withhold, CS-68, and the Answer to Withhold, CS-69, to financial institutions holding the obligor's account, or accounts, with a balance or combined balance of \$500 or more; ~~the Order to Withhold, CS-68, and the Answer to Withhold, CS-69~~;

(c) Issue a copy of the Order to Withhold to the obligor by certified mail within two (2) working days after the Order to Withhold and Answer to Withhold are issued to the financial institution;

(d) Notify the obligor that the only basis for contesting an Order to Withhold shall be a mistake of fact pursuant to KRS 205.712(13); ~~and~~

(e) Refer the case for parent-locator service if the Order to Withhold is returned and the forwarding address for the obligor is unknown;

(f) If the obligor requests a dispute hearing based upon a mistake of fact, and returns a written request within twenty (20) calendar days of the date notification was received:

1. Schedule and hold an interview with the obligor within ten (10) working days of the request;

2. Attempt to resolve the dispute at the time of the interview; and

3. If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(g) If there is no dispute or a hearing results in a finding that the case qualifies for the withhold and deliver process, and the obligor does not take an action specified in subsection (2) of this section, the cabinet shall send to the financial institution, within (20) twenty days of the date of decision, the Order to Deliver; and

(h) Notify the financial institution and the obligor of the Release of Order to Withhold, CS-70, within twenty (20) working days of the hearing branch's decision or the obligor's action as follows:

1. Makes full payment;

2. Posts a bond for the full arrearage; or

3. Enters into an agreement as specified in subsection (2)(d) of this section and makes the first payment within seven (7) calendar days of the agreement.

(2) To retain the account, an obligor shall take one (1) of the following actions within twenty (20) working days from the date of receipt of the order to withhold:

(a) Contest the order to withhold by [in] writing to the Child Support Program;

(b) Pay the total arrearage specified in the order to withhold;

(c) Post a bond for the total arrearage specified in the order to withhold; or

(d) Enter into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

1. If the arrearage is less than \$1,000, fifty (50) percent;

2. If the arrearage is equal to or greater than \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000; or

3. If the arrearage is equal to or greater than \$2,000, \$750 plus ten (10) percent of the amount over \$2,000.

Section 10. Administrative Enforcement Actions. (1) If an obligor of a child receiving public assistance owes past-due support, he shall be obliged to participate in a minimum of twenty (20) hours of work, educational or vocational training activities per week pursuant to KRS 405.430(8).

(2) If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet shall:

(a) File a lien on the obligor's interest in personal or real property within the Commonwealth, pursuant to KRS 205.745;

(b) Give notice to the obligor that:

1. He may contest the lien pursuant to KRS Chapter 13B and 921 KAR 1:400; and

2. A transfer of property in order to avoid payment will be considered an act of fraud, in accordance with KRS 405.060(2);

(c) Provide advance notice to the obligor that:

1. Past-due amounts will be reported to a certified consumer reporting agency; and

2. He may contest the accuracy of the information by filing an appeal pursuant to KRS Chapter 13B;

(d) Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies pursuant to KRS 205.768, if the advance notice is returned as undeliverable and subsequent location efforts are unsuccessful;

(e) Submit the obligor's name and arrearage amount for inclusion on the periodic report made available to certified consumer reporting agencies, if the obligor does not pay or appeal within thirty (30) calendar days from the date notice was received; and

(f) Request a full credit report from a certified consumer credit reporting agency if the obligor does not pay or appeal within thirty (30) calendar days from the date notice was received.

(3) If an obligor owes an arrearage equal to or greater than six (6) month's ~~one (1)-year's~~ obligation, the cabinet shall take action against a professional license or certificate, occupational license or certificate, recreational license, or sporting license. [and for action against a driver's license the arrearage has accrued since January 1, 1994.] The cabinet shall:

(a) Determine if the obligor holds a ~~[driver's license;]~~ professional license or certificate, occupational license or certificate, recreational license, or sporting license~~[-or a license to carry a concealed weapon];~~

(b) Send to the obligor, by certified mail:

1. A "Notice of Intent to Request Denial or Suspension" which includes an Answer to Notice of Intent;

2. Notification that the only basis for a dispute hearing contesting the action is a mistake in fact, pursuant to KRS 205.712(13);

3. Notification that the "Notice to Licensing/Certification Board or Agency" will be rescinded if the obligor [he]:

a. Pays the total arrearage accrued;

b. Posts a bond for the total arrearage; or

c. Enters into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

(i) If the arrearage is less than \$1,000, fifty (50) percent of the arrearage;

(ii) If the arrearage is equal to or greater than \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000; or

(iii) If the arrearage is equal to or greater than \$2,000, \$750 plus ten (10) percent of the amount over \$2,000; ~~[-]~~

(c) Refer the case for parent-locator service, if the notice of intent is returned and the forwarding address unknown;

(d) If the obligor requests a dispute hearing based upon a mistake of fact, and returns the obligor's answer to notice of intent within twenty (20) calendar days of the date notification was received;

1. Schedule and hold an interview with the obligor within ten (10) working days of the response;

2. Attempt to resolve the dispute at the time of the interview; and

3. If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(e) If there is no dispute, or a hearing results in a finding that the case qualifies for license or certificate denial, suspension, or revoca-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

tion, and the obligor does not take an action specified in paragraph (b)3 of this subsection, send within twenty (20) days of the date of decision a "Notice to Licensing/Certification Board or Agency" to the issuing agency or board of licensure or certification; or

(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:

1. Makes full payment;
2. Posts a bond for the full arrearage;

3. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (b)3c of this subsection; or

4. For a person who had failed to respond to a subpoena or warrant, the person has complied with the subpoena or warrant.

(4) If an obligor owes an arrearage equal to or greater than six (6) months obligation and has failed to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot pursuant to KRS 205.745(9).

(a) The cabinet shall give prior notice in accordance with paragraph (b)1 of this subsection to the obligor of the date the appropriate local law enforcement personnel intend to boot a vehicle.

(b) The delinquent obligor shall:

1. Have 10 (ten) days to respond to a notice of intent to boot a vehicle; and

2. Enter into an agreement with the cabinet to release the lien and vehicle boot if the obligor:

- a. Pays the total arrearage accrued;
- b. Posts a bond for the total arrearage; or

c. Enters into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

(i) If the arrearage is less than \$1,000, fifty (50) percent of the arrearage;

(ii) If the arrearage is equal to or greater than \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000; or

(iii) If the arrearage is equal to or greater than \$2,000, \$750 plus ten (10) percent of the amount over \$2,000; and

d. Pays:

(i) The forty (40) dollar cost of the removal of a vehicle boot to the appropriate local law enforcement personnel; and

(ii) The cost of towing and storage if a charge is incurred.

3. If the obligor enters into an agreement with the cabinet to release the lien, the cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

(5) A newspaper publication of a list of delinquent obligors, as established in KRS 405.411, provided by the Cabinet for Families and Children, Department for Community Based Services, Division of Child Support, shall:

(a) Identify an obligor as specified by subsection (9)(a) of this section;

(b) Include the name, last known address and the amount owed of the obligor meeting the criteria; and

(c) Be published no less than twice yearly.

(6) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon and shall take action against a driver's license for arrearage accrued since January 1, 1994, according to subsection (3) of this section.

(7) If the obligor owes an arrearage of \$5,000 or more:

(a) The cabinet shall send an advance notice of intent to collect past-due support, notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, pursuant to KRS 205.712(8);

(b) The cabinet shall forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation;

(c) The cabinet shall notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than \$5,000;

2. The obligor is in compliance with payments ordered in an existing arrearage judgment;

3. A payment reduces the arrearage to less than \$5,000; or

4. If there is no ordered arrearage payment, the obligor:

a. Posts a bond for the total amount due; or

b. Enters into a payment agreement to pay current support plus a monthly payment on the arrearage, specified as follows:

(i) In the first month, a \$750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and

(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent.

(8) If an obligor owes an arrearage equal to or greater than \$10,000, the cabinet shall:

(a) Use the following criteria to designate an obligor for a delinquent listing:

1. The obligor has not made a payment within the last six (6) months;

2. The obligor has a known address;

3. The cabinet is the payee for support; and

4. The cabinet has audited arrearages within the last year;

(b) Provide to the Office of the Attorney General a delinquent listing no less than twice yearly for publication on the Internet, pursuant to KRS 205.712(16);

(c) Send to an obligor meeting the criteria in paragraph (a) of this subsection a notice of intent to include the obligor in a delinquent listing; and

(d) Not include the obligor in the delinquent listing if the obligor:

1. Pays the total arrearage accrued;

2. Posts a bond for the total arrearage; or

3. Enters into a payment agreement to pay current support plus a monthly payment on the arrearage, specified as follows:

a. In the first month, a \$750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and

b. In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent;

(e) Refer the case for parent-locator service if the notice is returned and the forwarding address unknown;

(f) If the obligor requests a dispute hearing based upon a mistake of fact within twenty (20) calendar days of the date notification was received, the cabinet shall:

1. Schedule and hold an interview with the obligor within ten (10) working days of the response;

2. Attempt to resolve the dispute at the time of the interview; and

3. If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(g) If there is no dispute, or a hearing results in a finding that the case qualifies for the delinquent listing, and the obligor does not take an action specified in paragraph (c) of this subsection, the cabinet shall include the obligor in the delinquent listing provided to the Office of the Attorney General;

(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor:

1. Pays the total arrearage accrued;

2. Posts a bond for the total arrearage; or

3. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (d)3 of this subsection.

(9) [(5)] If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding:

(a) The agency shall contact the contracting official to determine if the contracting official intends to pursue judicial action;

(b) If the contracting official determines that judicial action will not be taken, the agency shall:

1. Advise the contracting official of the agency's intent to proceed with the notice to revoke or deny a license or certificate; and

2. Proceed in accordance with the provisions of subsection (4) [(3)] of this section, except that the person shall be notified that he may retain his license or certificate by complying with the subpoena or warrant.

Section 11. Appeal Procedure. An obligor may request a dispute

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

hearing in accordance with KRS 405.450 or 405.490(4).

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) CS-44 "Notice of Intent to Request Denial or Suspension", edition 2/01 [8/99];
- (b) CS-63 "Notice to Licensing/Certification Board or Agency", edition 2/01 [8/99];
- (c) CS-68 "Order to Withhold", edition 8/99;
- (d) CS-69 "Answer to Withhold", edition 2/01 [8/99];
- (e) CS-70 "Release of Order to Withhold", edition 8/99;
- (f) CS-76 "Unemployment Insurance Agreement", edition 8/99;
- (g) CS-78 "Payment Agreement", edition 2/01 [10/98];
- (h) CS-83 "Order to Deliver", edition 8/99;
- (i) CS-84 "Administrative Subpoena", edition 10/98;
- (j) CS-85 "Notice of Lien", edition 10/98;
- (k) CS-89 "Order and Notice to Withhold Income for Child Support", edition 10/98;
- (l) CS-92 "Intrastate Notice of Lien", edition 10/98;
- (m) CS-93 "Advance Notice of Intent to Request Full Credit Report", edition 10/98;
- (n) CS-111 "Child Support Received Affidavit", edition 10/98;
- (o) CS-119 "Obligor's Notice of Lien", edition 8/99;
- (p) CS-120 "Release of Lien", edition 10/98;
- (q) CS-121 "Noncustodial Parent or Obligor Answer to Withhold", edition 8/99;
- (r) CS-122 "Advance Notice of Intent to Collect Past-Due Support", edition 2/01 [10/98];
- (s) CS-148 "Custodial Parent Affidavit Letter", edition 10/98;
- (t) CS-149 "Custodial Parent Affidavit of Support Paid", edition 10/98;
- (u) CS-164 "Notice of Income Withholding", edition 10/98;
- (v) NOC "Notice of Claim", edition 8/99;
- (2) CS-175 "Notice of Intent to Place Obligor's Name on Delinquent Listing", edition 2/01.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Families and Children [Department for Community-Based Services], 275 East Main Street, Frankfort, Kentucky 40621 [40601], 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: December 8, 2000

FILED WITH LRC: December 12, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 16, 2001, 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: Kellie Peace, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-9126.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the requirements for the collection and distribution of child support payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary pursuant to provisions of KRS

205.712(2) which requires the cabinet to enforce and collect child support obligations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes procedures for the collection and distribution of child support payments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides the processes for the various means of collection and the priority for the distribution of child support payments according to the type of IV-D case, e.g. KTAP, Foster Care, etc.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify the scope of the Financial Institution Data Match. It will implement provisions of recently codified legislation from the 2000 Session of the General Assembly concerning tort claims offset, vehicle booting, Office of the Attorney General Delinquency Listing and the publication of delinquent payors in local newspapers. It will also provide requirements for the allocation of income withheld payments in both IV-D and non-IV-D cases.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 205.712(16) and (17), 205.745, 405.411 and 15.055(2) (all codified from 2000 Ky. Acts Ch. 430).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation creates requirements for vehicle booting, tort claim offset, and local newspaper and Internet publication of delinquent payor names.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing requirements or standards for the new processes prescribed by the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect delinquent obligors. There are currently approximately 123,446 delinquent obligors in the state of Kentucky. Approximately 2,000 delinquent obligors meet the criteria established for local newspaper and internet publication of delinquent payor names. This regulation will also provide requirements for the allocation of income withheld payments to prevent the incorrect disbursement of payments intended for current support from being applied to arrearages.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Implementation of the provisions of this administrative regulation will provide additional means of enforcement against delinquent child support obligors. Implementation of the provisions concerning allocation of income withheld collections will benefit families and children by allowing the cabinet to disburse collections that formerly would have been applied to arrearages owed to the state. These requirements comply with legislative intent.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Costs shall be minimal. Any costs shall be offset by increased collections.

(b) On a continuing basis: Refer to response in 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 34% agency funds and 66% federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no fees.

(9) TIERING: Is tiering applied? Tiering was not applied because the Child Support Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect local contracting child support officials and local law enforcement personnel, e.g. sheriffs.
3. State the aspect or service of local government to which this administrative regulation relates. Local newspaper publication of delinquent payors by contracting officials and booting of vehicles.
4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation requires child support contracting officials to follow standards established by the Division of Child Support concerning the publication of delinquent payors' names in local newspapers and also contains requirements for local law enforcement staff to apply and remove vehicle boots.

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. Minimum standards stated in the federal mandate have been met.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standards, requirements or responsibilities are imposed.

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

922 KAR 1:330. Child protective services.

RELATES TO: KRS 13B.050, 13B.120, 13B.140, 13B.150, 61.878, 159.140, 431.600(1), (8), 503.110(1), 600.010, 600.020(1), (4), (6), (7), (8), (9), (10), (16), (19), (20), (21), (22), (24), (26), (36), (38), (39), (40), (41), (44), (46), (47), (50), (51), (52), 605.090(3), [600.10,] 605.130, 610.010(1)(e), (8), 620.010 to 620.050, 620.990, 42 USC 5106a [1998 Ky. Acts chs. 57, 303, 339, 426, sec. 604]

STATUTORY AUTHORITY: KRS 194B.050(1), 605.150, 620.180, 42 USC 5106a [1998 Ky. Acts ch. 426, sec. 34(1), EO 98-731]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) [1998 Ky. Acts ch. 426, sec. 34(1)] requires the Secretary for the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children. This administrative regulation sets forth the procedures for a child protection investigation or family-in-need-of-services assessment [investigations] of abuse, neglect, or dependency by the cabinet [Department for Community-Based Services] in compliance with KRS 605.150 and 620.180.

Section 1. Definitions. (1) "Adult services worker" means any employee of the cabinet assigned to provide services to adults in need of services within the cabinet.

(2) "Cabinet" is defined at KRS 600.020(6).

(3) "CAPTA" is the Child Abuse Prevention Treatment Act codified at 42 USC 5106a.

(4) "Caretaker" is a person who is responsible for the supervision and well-being of a child.

(5) "Child protective services" means preventive and corrective

services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected or dependent child [children];

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

(d) Strengthening family life; and

(e) Assisting parents or other persons responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of a child; and

(f) Identifying and correcting conditions in society which contribute to the neglect, abuse or dependency of a child.

(6) [(2)] "Failure to locate" means the identifying information about the family is insufficient for locating them or the family has moved and their new location is not known.

(7) "Family-in-need-of-services assessment" is a process of collecting information and evaluating risk factors to determine strengths and needs of a family. This process is appropriate when an initial determination reflects that low risk factors exist using the CPS Multiple Response Matrix. The purpose of this assessment is to link a family to services focused on the safety and well-being of a child and family.

(8) [(9)] "Found and substantiated" means a type of physical abuse, sexual abuse, neglect or dependency not originally reported by the referral source was found and substantiated during the investigation.

(9) "Initial determination" means an evaluation of risk factors using the CPS Multiple Response Matrix to determine immediate safety and risk of harm resulting in a decision whether to proceed with:

(a) An investigation; or

(b) A family-in-need-of-services assessment.

(10) "Investigation" means:

(a) A process of collecting information and evaluating risk factors to make a social work determination if a child has been abused, neglected or is dependent;

(b) A process based upon the initial determination that moderate to high risk factors exist; and

(c) If needed, providing services for the safety and well-being of the child.

(11) "Preponderance of evidence" means in order to support a finding that a particular person has committed child abuse or neglect, the evidence shall be sufficient to allow a reasonable person to conclude that it is more likely than not that the child in question was abused or neglected and it is more likely than not that the alleged perpetrator committed the act of commission or omission as governed by KRS 600.020(1).

[(4)] "Prior involvement" means:

(a) Either the child or caretaker are currently registered protection and permanency clients or have been registered clients within one (1) year of the reported fatality; or

(b) A protective service investigation was completed in regard to the child or caretaker, regardless of the status of the investigation, within one (1) calendar year preceding the reported fatality.

(12) [(5)] "Substantiated" means:

(a) An admission of abuse, neglect or dependency by the person [persons] responsible; or

(b) A judicial finding [determination] of child abuse, neglect or dependency; or

(c) A preponderance of evidence exists [strong circumstantial or other supportive indicators] that abuse, neglect, or dependency was committed by the persons alleged to be responsible.

(13) [exist;

(6)] "Unsubstantiated" means there is insufficient evidence, indicators or justification present for substantiation [suspicion] of abuse, neglect or dependency.

Section 2. Receiving a Report of Child Abuse, Neglect, or Dependency. (1) The cabinet [Department for Community-Based Services] shall accept reports of child abuse, neglect or dependency made pursuant to [as governed by] KRS 620.030.

(a) A twenty-four (24) hour on-call response system [The home telephone numbers of family services workers, family services office supervisors;] and the child abuse hotline shall be made available to agencies in a [the] community who may receive [encounter] child

abuse, neglect or dependency for emergency reports after normal office hours [unless a formalized on-call system exists].

(b) Cabinet staff [The intake worker] shall attempt to elicit from the person reporting [the] suspected child abuse, neglect or dependency as much information about the child's circumstances, as possible, including:

1. Specific information as to the nature and extent of abuse, [or] neglect or dependency;
2. The cause [causes] of the abuse, neglect or dependency;
3. The location of the child and family;
4. A determination of whether there has been a previous incident [Determine if there have been previous incidents];
5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition [Witnesses to the incident which caused the child's conditions];
6. Whether the reporting person or any other person has [others have] taken any action;
7. Present danger or threat of danger to the child or cabinet staff; and
8. The reporting person's [persons] identity and relationship to the child. Pursuant to KRS 620.050(5)(d) the identity of the person reporting [assuring him that his identity] shall not be revealed unless ordered by the court [the court orders his name divulged].

(c) An anonymous report that provides [Anonymous reports which give] sufficient information regarding the incident involving a child and reports of child [report] abuse, neglect or dependency by a caretaker shall be investigated or accepted as a family-in-need-of-services assessment.

(2) The cabinet shall not accept a report of abuse or neglect by a noncaretaker for investigation or family-in-need-of-services assessment but shall comply with KRS 620.030(1).

(3) Acceptance criteria.

(a) The cabinet shall receive a report of physical abuse for investigation or family-in-need-of-services assessment if the report alleges:

1. Marks that are or have been observed on a child that were allegedly inflicted nonaccidentally by a caretaker;
2. Physical abuse or risk of physical injury if no observable marks are seen;
 - a. A child being hit in critical areas of the body, which may include the head, face, neck, genitals, abdomen, and kidney areas; or
 - b. There are threats of physical injury;
3. Injury to a child that is the result of an altercation between the child and the caretaker. The cabinet shall explore the following:
 - a. Precipitating factors;
 - b. Degree of appropriateness of force used by the caretaker; and
 - c. Need for further services to assist in eliminating the violent behavior in the home.

(b) The cabinet shall receive for investigation or family-in-need-of-services assessment a report that alleges neglect of a child by a caretaker that may result in harm to the physical health and safety of a child in the following areas:

1. Hygiene neglect when:
 - a. A child has physical symptoms that require treatment due to poor care; or
 - b. The child's physical health and safety is negatively affected due to an act or omission by the caretaker;
2. Supervision neglect when the individual reporting has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;
3. Food neglect when a child shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Not having been provided adequate food for a period of time that interferes with the health needs of the child based on the child's age, and height or weight norms;
4. Clothing neglect when a child suffers from:
 - a. Illness;
 - b. Exposure; or
 - c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;
5. Environmental neglect when a serious health and safety hazard is present and the caretaker is not taking appropriate action to elimi-

nate the problem;

6. Educational neglect when the school system has:

- a. Exhausted their resources to correct the problem and complied with their duties pursuant to KRS 159.140; and
 - b. The neglect of the caretaker prevents the child from attending school or receiving appropriate education;
7. Medical neglect when a child has not received a medical assessment or is not receiving treatment for an injury or illness or disability that if left untreated may:
- a. Be life-threatening;
 - b. Result in permanent impairment;
 - c. Interfere with normal functioning and worsen; or
 - d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease;

8. At risk of harm pursuant to KRS 600.020(1) when a child is:

- a. Born exposed to drugs or alcohol;
- b. A witness to domestic violence;
- c. Permitted to use drugs or alcohol under circumstances that create a risk to the emotional or physical health of the child;
- d. In a situation when the factors provided in a report indicate that an act of sexual abuse, sexual exploitation or prostitution may be inflicted upon a child, or the child exhibits physical or behavioral indicators of sexual abuse;
- e. In a situation where the circumstances are such that a child is likely to be physically abused;
- f. A report that alleges emotional injury or risk of emotional injury of a child by a caretaker as governed by KRS 600.020(24);

(c) The cabinet shall receive and investigate a report that alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease.

(d) The cabinet shall receive and investigate or complete a family-in-need-of-services assessment on a report that alleges a child is dependent as governed by KRS 600.020(19).

(4) The following criteria shall be used in identifying a report of abuse, neglect or dependency not requiring a child protective services investigation or family-in-need-of-services assessment:

- (a) The victim of the report or abuse, neglect or dependency is age eighteen (18) or over;
 - (b) There is insufficient information to locate the child or explore leads to locate;
 - (c) The problem described does not meet the statutory definitions of abuse, neglect or dependency;
 - (d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
 - (e) The report concerns custody changes, custody related issues or lifestyle issues without allegations of abuse, neglect or dependency;
 - (f) Pursuant to KRS 503.110(1) corporal punishment appropriate to the age of the child without injuries, marks or bruises or substantial risk of harm. This type of corporal punishment by foster parents shall be reported to and assessed by the cabinet as a violation of policy; and
 - (g) An allegation of spouse abuse to a married youth, under the age eighteen (18).
- (5) A report of spouse abuse to a married youth under the age of eighteen (18) shall be forwarded to an adult services worker.

Section 3. Initial Investigation or Family-in-Need-of-Services Assessment. (1) Based upon an accepted report of child abuse, neglect, or dependency, the cabinet shall make an initial determination as to the immediate safety and risk of harm of a child using the CPS Multiple Response Matrix.

(2) If the report of child abuse, neglect or dependency indicates imminent danger, the investigation shall be initiated within the hour.

(3) If the report of child abuse indicates nonimminent danger of physical or sexual contact, effort shall be made to have personal contact with the child and family within twenty-four (24) hours, but contact shall be made within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative or family-in-need-of-services narrative.

(4) If the report of child abuse, neglect or dependency indicates nonimminent danger, not involving physical or sexual contact, the investigation or family-in-need-of-services assessment shall be initi-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

ated within twenty-four (24) hours. Efforts shall be made to have personal contact with the child and family within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(5) An investigation or a family-in-need-of-services assessment shall be initiated within forty-eight (48) hours on reports of dependency if a child is not in imminent danger.

(6) A P&P Continuous Quality Assessment or CQA shall be completed by the cabinet on every investigation and family-in-need-of-services assessment.

(7) The cabinet may provide or make a referral to any community based services necessary to:

- (a) Reduce risk to a child; and
- (b) Provide family support.

(8) The P&P Safety Plan shall be completed in hard copy for a family-in-need-of-services assessment or an investigation:

(a) When the cabinet determines that abuse or neglect is substantiated or a family-in-need-of-services assessment determines a family needs service when:

1. A child remains in the home; and
2. A protection case shall be opened due to risk in the home;

(b) A safety plan shall be developed in conjunction with a family and the family's identified support system and be signed by all parties identified to participate in the provisions within the safety plan.

(9) Collateral contact shall be made pursuant to KRS 620.030, 620.040 and 620.050.

(10) Medical and psychological examination may be required if a report of child abuse, neglect or dependency alleges that a child has suffered physical or sexual harm or emotional injury.

(11) The cabinet shall receive cooperation in an investigation or family-in-need-of-services assessment pursuant to KRS 620.030(3).

(12) Photographs shall be taken of a child during a protective services investigation or family-in-need-of-services assessment without parental consent pursuant to KRS 620.050(8).

(13) An interview with a child shall be conducted pursuant to KRS 620.040(6).

(14) A child sexual abuse investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8) and 620.040(3). The cabinet's primary responsibility shall be the protection of the child.

(15) If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:

(a) From law enforcement; or

(b) Through a request for a court order pursuant to KRS 620.040(5)(a).

(16) If the court issues a search warrant for services by law enforcement:

(a) Cabinet staff may accompany law enforcement officers; and

(b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from his home without a court order.

(17) At the request of law enforcement, pursuant to KRS 620.040(3) the cabinet shall:

(a) Provide assistance in interviewing an alleged child abuse victim in a noncaretaker report; and

(b) Not be the lead investigator in noncaretaker investigations.

(18) The cabinet may refer to state and community resources, according to the identified need of the child, a report of abuse, neglect, or dependency that does not require a mandatory child protection services investigation or family-in-need-of-services assessment.

Section 4. Alleged Perpetrators of Abuse, Neglect, or Dependency Age Twelve (12) to Eighteen (18). A report of child abuse, neglect, or dependency involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18), shall be subject to investigation or a family-in-need-of-services assessment. If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator, but the name of the alleged perpetrator shall not be released except through a court order pursuant to KRS 620.050(4)(g).

Section 5. Reports of Child Abuse, Neglect or Dependency in Cabinet-approved Homes or Licensed Facilities. (1) Pursuant to KRS

620.030(3), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect or dependency in a:

(a) Licensed child-caring facility;

(b) Licensed child-placing agency; or

(c) Licensed or certified day care facility; or

(d) Cabinet-approved foster or adoptive home.

(2) If a report of alleged child abuse, neglect or dependency in an approved foster home or adoptive home is received:

(a) The supervisor shall immediately contact the service region administrator or designee;

(b) The service region administrator or designee shall designate staff to conduct the investigation;

(c) If abuse, neglect or dependency is substantiated in a foster home, a review of the home shall be completed except when the home is being closed; and

(d) The decision to close or continue using the foster home shall be made by the service region administrator or designee based on pertinent available information.

(3) If a report of alleged child abuse or neglect in a certified family child care home or a licensed child day care facility is received, the cabinet staff shall notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement or a licensed day care center is received, the cabinet shall notify the Cabinet for Health Services, Division of Licensing and Regulation.

(a) If possible, an investigation shall be coordinated and conducted jointly with the Division of Licensing and Regulation. However, if not possible, the cabinet shall proceed with an investigation.

(b) In a joint investigation the cabinet staff, with Division of Licensing and Regulation staff, shall conduct an entrance interview with the facility administrator or designee outlining the nature of the report of child abuse or neglect without disclosing the name of the reporter.

(c) When there is a finding of substantiation of child abuse or neglect by the cabinet and the alleged perpetrator is an employee of the facility, the operator of the facility shall be notified of the finding by the cabinet.

(5) Written findings of an investigation shall be shared with the:

(a) Division of Child Care for a licensed child day care facility and certified family child care home; and

(b) Division of Licensed Child Care for a licensed child day care facility.

(6) At the time it is determined that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the cabinet's division responsible for child care and the Office of the Inspector General.

Section 6. Interviewing a Child in School Settings or When the Alleged Perpetrator of Abuse or Neglect is an Employee of the School System. (1) When a report of child abuse or neglect involving school personnel is received the following shall apply:

(a) If allegations of child abuse or neglect have been made about a school employee, with the incident occurring during school time or other school related activities, the cabinet shall, if possible:

1. Interview a child and natural parent or legal guardian and conduct an interview away from school grounds; and

2. Interview the alleged perpetrator away from the school grounds;

(b) If the report of child abuse or neglect is unsubstantiated, further action shall not be taken. Information regarding the report findings of child abuse or neglect shall be shared with the alleged perpetrator and the custodial parent. Other information shall be requested through open records procedure pursuant to KRS 61.878.

(c) If a report of child abuse or neglect is substantiated, the cabinet shall notify in writing the appropriate supervisor of the alleged perpetrator:

1. That an investigation has been conducted;

2. The results of the investigation; and

3. That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:320, Section 2.

(2) Pursuant to KRS 620.030(3), the cabinet shall:

(a) Have the authority to investigate or conduct a family-in-need-

of-services assessment upon the receipt of a report of child abuse or neglect, including the ability to review and copy school records pertaining to the child, at school without parental consent;

(b) Inform appropriate school personnel of the need to interview a child regarding a referral of child abuse, neglect or dependency; and

(c) Give details of an allegation and investigation only to school personnel with a legitimate interest in the case.

Section 7. Written Notice of Initial Findings of Investigation. The cabinet shall provide notification to law enforcement officials and the county or Commonwealth's attorney within seventy-two (72) hours of receipt of the report of child abuse, neglect or dependency pursuant to KRS 620.040(1)(c).

Section 8. Substantiation Criteria and Submission of Findings. (1) When making a social work determination whether to substantiate allegations of child abuse, neglect or dependency, the cabinet shall be guided by KRS 600.020(1) and (19).

(2) The social work determination is not a judicial finding.

(3) After the investigation or family-in-need-of-services assessment and the investigation results summary is completed pursuant to Section 3 of this administrative regulation, the cabinet's supervisor or designated person to perform this function shall review and approve the finding of the investigation or family-in-need-of-services assessment.

(4) Notice of a substantiated finding and the DCBS 154 incorporated in 922 KAR 1:320 shall be sent to the perpetrator by certified mail or given to the perpetrator in person with the perpetrator and a witness signing documentation that notification was received by the perpetrator.

(5) Notice of a substantiated finding and a DCBS 154 incorporated in 922 KAR 1:320 shall be sent to the victim's parent or guardian per certified mail or given to them in person with the parent or guardian and a witness signing documentation that notification was received.

Section 9. Appeals. (1) After a substantiated decision is made that an individual has perpetrated abuse or neglect, a perpetrator may request an administrative hearing in accordance with 922 KAR 1:320.

(2) If an administrative hearing is held, the Commissioner of the Department for Community Based Services shall issue the final order.

(3) A further appeal may be requested through circuit court in accordance with KRS 13B.140 and 13B.150.

Section 10. Case Closure and Aftercare Planning. (1) A decision to close a child protective services case shall be based on evidence that the original factors resulting in the child abuse, neglect or dependency have been resolved to the extent that the family is able to protect the child and is able to meet the needs of the child or there is a lack of legal authority to obtain court ordered cooperation from the family.

(2) A child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect or dependency.

(3) A family shall be notified in writing of the decision to close the protective services case. A DCBS-154 Service Complaint shall be given to the family advising them of the right to a fair hearing in compliance with 922 KAR 1:320.

(4) The purpose of aftercare planning is to link a family to community resources for the purpose of continuing preventive measures whenever the cabinet discontinues services in accordance with this section.

(5) The P&P Aftercare Plan shall be used:

(a) Upon completion of an investigation or family-in-need of services assessment; and

(b) When an issue or concern is identified by the cabinet but the issue falls below the level that would trigger a protection case being opened.

(6) At the time it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the P&P Aftercare Plan. The focus of a P&P Aftercare Plan shall be to prevent a reoccurrence of child abuse, neglect or dependency to the child in the home.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "P&P CQA, Continuous Quality Assessment Form", March, 2000, Cabinet for Families and Children;

(b) "CPS Multiple Response Matrix", November, 2000, Cabinet for Families and Children;

(c) "P&P Safety Plan", November, 2000, Cabinet for Families and Children; and

(d) "P&P Aftercare Plan", November, 2000; Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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. [Acceptance criteria:

(a) The department shall receive and investigate reports of physical abuse if there are reported to be or have been observable marks on a child which were allegedly inflicted nonaccidentally by a caretaker. The department may accept a report of physical abuse or risk of physical injury if no observable marks are seen and if:

1. There are reports of a child being hit in critical areas of the body, which may include the head, face, neck, genitals, abdomen, and kidney areas;

2. There are reports of threats of physical injury; or

3. There are allegations of injuries to a child which are the result of altercations between the child and the custodian. The worker shall explore the precipitating factors, the degree of appropriateness of force used by the caretaker and the need for further services to assist in eliminating the violent behavior in the home.

(b) The department shall receive and investigate reports which allege neglect of a child by a caretaker which may result in harm to the physical health and safety of the child in the following areas:

1. Hygiene neglect exists if:

a. A child has physical symptoms that require treatment due to poor care; or

b. The child's physical health and safety is negatively affected due to an act or omission by the caretaker;

2. Supervision neglect exists if the caller has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;

3. Food neglect exists if a child shows symptoms of:

a. Malnutrition;

b. Dehydration;

c. Food poisoning; or

d. Not having been provided adequate food for a period of time that interferes with the health needs of the child based on age and other conditions;

4. Clothing neglect exists if a child suffers:

a. Illness;

b. Exposure; or

c. Frostbite due to inadequate clothing or the clothing is insufficient to protect the child from the elements.

5. Environmental neglect exists if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;

6. Educational neglect exists if the school system has exhausted their resources to correct the problem and the caretaker's negligence prevents the child from attending school or receiving appropriate education; and

7. Medical neglect exists if a child is not receiving medical assessment or treatment for an injury or illness or disability which if left untreated may:

a. Be life-threatening;

b. Result in permanent impairment;

c. Interfere with normal functioning and worsen without treatment; or

d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease.

(c) The department shall receive and investigate reports which allege sexual abuse of a child committed or allowed to be committed by a caretaker or the risk that an act of sexual abuse, sexual exploitation, or prostitution shall be committed on a child. Pursuant to 1998 Ky. Acts ch. 426, sec. 601, and ch. 339, sec. 1, each investigation of reported or suspected child sexual abuse shall be conducted by the

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

multidisciplinary team, if available. Reports of sexual abuse shall include contacts and interactions in which a child is used to sexually stimulate or gratify another person. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease and the child exhibits physical or behavioral indicators of abuse.

(d) The department may receive and investigate reports which allege risk of sexual harm to a child, if there are factors which cause a person to believe that an act of sexual abuse may be committed on a child.

(e) The department shall receive and investigate reports which allege emotional injury or risk of emotional injury of a child by a caretaker as governed by 1998 Ky. Acts ch. 57, sec. 2(20).

(f) The department shall receive and investigate reports which allege a child is dependent as governed by KRS 600.020(16).

Section 3. The cabinet shall not investigate reports of abuse or neglect by a noncaretaker but shall comply with KRS 620.030(1).

(1) Staff shall keep a log of these referrals specifying the date received and date referred to the Commonwealth's or county attorney and local law enforcement.

(2) Staff may at the request of local law enforcement provide assistance in interviewing alleged child abuse victims.

(3) Staff may refer to other agencies referrals not requiring mandatory child protection services investigations.

(4) The following criteria shall be used in identifying referrals not requiring investigation:

(a) The victim of the report is age eighteen (18) or over;

(b) There is insufficient information to locate the child or explore leads to locate;

(c) The problem described does not meet the statutory definitions of abuse, neglect or dependency;

(d) Reporter notifies the department that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;

(e) If the report concerns custody changes or custody related issues or lifestyles issues without allegations of abuse, neglect or dependency;

(f) Corporal punishment appropriate to the age of the child without injuries, marks or bruises or substantiated risk of harm. This type of corporal punishment by foster parents shall be reported;

(g) Allegations of abuse or neglect of a fetus;

(h) Allegations of spouse abuse to a married youth, under the age eighteen (18). These reports shall be forwarded to the adult services worker.

(i) If the report concerns a specific incident previously investigated and no new information or change in the child's circumstances is communicated.

Section 4. Report of Suspected Child Abuse, Neglect, Dependency. Following the receipt of the report, the DSS-115, the Suspected Abuse, Neglect, Dependency, or Exploitation Reporting Form incorporated by reference, shall be completed and the report investigated. Investigations shall be conducted according to the following time frames as governed by KRS 620.040(1):

(1) If the report indicates the child is in imminent danger, the investigation shall be initiated within the hour.

(2) If the report indicates nonimminent danger of physical or sexual contact, effort shall be made to have personal contact with the child and family within twenty-four (24) hours, but contact shall be made within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(3) If the report indicates nonimminent danger, not involving physical or sexual contact, the investigation shall be initiated within twenty-four (24) hours. Efforts shall be made to have personal contact with the child and family within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(4) Reports of dependency if a child is not in imminent danger shall be investigated within forty-eight (48) hours.

Section 5. Reports of Abuse, Neglect, and Dependency in Cabinet-approved Homes or Licensed Facilities. (1) If a report of alleged child abuse, neglect or dependency in an approved foster home or adoptive home is received, the supervisor shall immediately contact the service region administrator or designee who shall designate a

worker to conduct the investigation. If abuse, neglect or dependency is substantiated a review of the home shall be completed. The decision to close or continue using the home shall be made by the service region administrator or designee based on pertinent available information.

(2) If a report of alleged child abuse or neglect in a licensed child care facility, private child care or a day care center is received the worker shall notify the Division of Licensing and Regulation. This notification shall be documented in the case and may be done by phone and followed up in writing. If possible, the investigation shall be coordinated and conducted jointly; however, if not possible within the designated time frame, the worker shall proceed with the investigation. In joint investigations the DCBS worker providing protection and permanency services shall with the Division of Licensing and Regulation staff:

(a) Conduct an entrance interview with the facility administrator or designee outlining the nature of the report without disclosing the name of the reporter; and

(b) Discuss their findings privately prior to conducting an exit interview.

(3) Reports of abuse or neglect involving school personnel:

(a) If allegations of child abuse or neglect have been made about a school employee, with the incident occurring during school time or other school related activities, the worker shall:

1. Complete the DSS-115, Suspected Abuse, Neglect, Dependency, or Exploitation Reporting Form and forward copies to appropriate law enforcement and county or commonwealth attorney;

2. Interview child and natural parents or legal guardians. Conduct the interview away from school grounds, if possible;

3. Interview the alleged perpetrator away from the school grounds if possible.

(b) If the referral is unsubstantiated, further action shall not be taken. Information regarding the finding of the report may be shared with the alleged perpetrator and the custodial parent. Other information shall be requested through open records procedures.

(c) If the referral is substantiated, the worker shall notify the appropriate supervisor of the alleged perpetrator that an investigation has been conducted, the results of the investigation, and that the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:320.

(4) If a report of alleged child abuse or neglect in a certified family child care home is received the worker shall notify the Department's Division of Child Care.

Section 6. Prior Reports. (1) Before investigating the referral regarding a child unknown to the local office, the worker shall determine the existence of:

(a) Prior reports;

(b) A closed case; or

(c) A case opened elsewhere in the state.

(2) This information shall be documented in the case record but failure to secure this information shall not delay the investigation within the stated time frames.

Section 7. Initial Investigation. Information necessary for determining the validity of the report, and if valid, the existence of imminent danger and risk to the child shall be obtained during the investigation. Investigations shall entail face-to-face contact with the alleged victim, if of appropriate age. If possible, parents or caretakers, appropriate household and family members, and alleged perpetrators shall be interviewed:

(1) If determining whether to interview the child, parent or caretaker first, consideration shall be given to the:

(a) Nature of the referral;

(b) Current location of the child;

(c) Indicated risk to the child; and

(d) Known violence on the part of the parent.

(2) A child shall not be interviewed in the presence of the alleged perpetrators or others who may put pressure on the child.

(3) If the worker is unable to contact the parents or caretaker, he shall notify the supervisor and document the case record.

(4) Collateral contacts shall be interviewed if the validity or severity of the report cannot be determined from the interviews. Collateral sources may include:

- (a) Officers of the court;
- (b) School personnel;
- (c) Neighbors;
- (d) Medical personnel;
- (e) Law enforcement officers; and
- (f) Personnel of other agencies.

(5) Medical and psychological examinations may be required if the report alleges that the child has suffered sufficient physical harm of a serious nature, or emotional injury. The worker, if possible, shall obtain a copy of the report.

(6) The worker shall cooperate with law enforcement.

(a) Child sexual abuse investigations shall be investigated jointly with law enforcement. The investigation shall be initiated within time frames established in Section 4 of this administrative regulation.

(b) Attempts shall be made to ensure that the worker shall not impede the criminal investigation; however, the worker's primary responsibility shall be the protection of the child.

(7) To prevent a child from experiencing multiple interviews a videotaped interview may be appropriate.

Section 8. Alleged Perpetrators Age Twelve (12) or Older. Reports involving perpetrators in a caretaking role under the age of twelve (12), shall be investigated. However, the child shall not be identified as the alleged perpetrator on the DSS-150, Child Protection Investigation Results, incorporated by reference.

Section 9. Interviewing Children in Schools. Worker's shall have the authority to investigate child abuse, neglect or dependency reports at school without parental consent. The worker shall inform appropriate school personnel of the need to interview a child regarding a referral. Details of the allegation and investigation shall only be given to school personnel with a legitimate interest in the case.

Section 10. Notice of Results of Investigation. The worker shall complete the notification section of the DSS-115, and forward it to law enforcement officials and the county or commonwealth attorney within seventy-two (72) hours of receipt of the report, exclusive of weekends and holidays as governed by KRS 620.040(1).

Section 11. Medical Neglect of Disabled Infants. (1) The department shall be notified of known or suspected instances of the withholding of medically indicated treatment of disabled infants with life threatening conditions in hospitals or health care facilities. Federally funded hospitals and health care facilities shall be given the department's toll-free child abuse hotline number.

(2) If a report is received, hotline staff shall notify a child protective services specialist in central office if received during working hours or a designated person at home if received outside working hours.

(3) Central office staff shall contact one (1) of the department's medical consultants who shall investigate the report.

Section 12. Denied Entry to a Home for a Protective Service Investigation. (1) The worker shall not enter a home during the investigation of a report if an adult is not present in the home.

(2) If there is reason to believe the child is in imminent danger, law enforcement shall be contacted for assistance.

(3) If the parents or caretakers of a child refuse the worker entry to the child's home or refuse to allow the child to be interviewed, the worker with approval of the supervisor may request an order from the court.

(a) If the court issues a search warrant the worker may accompany law enforcement officers if the warrant is served;

(b) With the exception of removal of a committed child, the worker shall not remove a child from the home without a court order to remove;

(c) If the court refuses to issue a search warrant, the family service worker shall document the attempts to secure one in the narrative.

Section 13. Risk Assessment. During an investigation of alleged child abuse and neglect, the worker shall assess the strengths of the family and risk to the child by completing the Child Risk Assessment, the Family Assessment, and the Staff Assessment Forms. The worker shall not be required to complete these assessments if the:

- (1) Child is found dependent;
- (2) Alleged perpetrator is not the child's primary caretaker;
- (3) Investigation determines the referral to be unsubstantiated or unable to locate; or
- (4) Investigation of a child fatality determines there are no surviving children in the home.

Section 14. Child Fatality or Near Fatality Investigations. (1) Reports that a child fatality or near fatality has occurred due to abuse or neglect by a parent, guardian or other person exercising custodial control or supervision of the child shall be investigated by the department.

(2) If the alleged perpetrator was not a parent or in a caretaker role, the reports shall be forwarded pursuant to KRS 620.030.

(3) If it is determined that the department has prior involvement, the commissioner, the Office of Communications and the general counsel of the cabinet shall be notified of the situation immediately through the established channels of communication. The notification shall include:

- (a) Name and age of victim;
- (b) Known circumstances around the fatality or near fatality;
- (c) Description of physical injuries or medical condition of the child;
- (d) Names, ages and location of other children in the family;
- (e) Brief description of the department's history with the family caretaker;

(f) Actions taken by the department to date and future actions to be taken; and

(g) Involvement of other professionals in the case.

(4) It may be advisable that staff who have had prior direct involvement with the case not be assigned to conduct the investigation.

(a) The assigned investigator, if feasible, shall consult with social workers who have direct involvement with the case prior to investigating.

(b) A joint investigation with law enforcement shall be conducted if possible. The designated investigator shall:

1. Be cooperative, but not usurp the roles of law enforcement or the coroner or interfere with their respective investigations; and

2. Contact appropriate law enforcement and coroner to clarify roles and establish a common channel of communication, particularly if the intake information indicates other children are present in the household.

(c) Worker safety in a potentially dangerous setting shall be considered during the course of the investigation. Collateral contacts with medical personnel, the coroner and other appropriate persons may be made to assess potential danger to staff.

(5) The worker shall determine the safety of any surviving children through immediate assessment to assure their safety. The risk assessment guidelines shall be completed if there are surviving children in the home, unless the use of the risk assessment guidelines is inappropriate as specified in Section 13 of this administrative regulation. The reason for omission of the risk assessment shall be documented in the case record. This assessment shall include:

(a) Arranging for physical examinations to check for injuries to the surviving children, if indicated;

(b) Determining whether there has been any history of prior abuse, neglect to the children or other family members by the alleged perpetrator;

(c) Interviewing the children to assess present emotional condition and to determine to what extent they may have witnessed family violence;

(d) Interviewing the parent or caretaker to observe interaction with children and to discuss parent or family history of the caretaker;

(e) Making collateral contacts with neighbors, schools and extended family;

(f) Determining whether the surviving children were present during the time the deceased child received injuries and witnessed what occurred; and

(g) Initiating mental health counseling immediately, if appropriate, for the emotional stability of the children;

(6) If parental rights have been terminated and there has been ongoing contact or other special circumstances, the decision to notify biological parents shall be made by the service region administrator or designee. The Department of Public Advocacy, Protection and Advo-

ecacy Division, shall be notified if a child, identified as a protection and advocacy client, dies as a result of abuse or neglect and the perpetrator is in a caretaker role.

(7) In the case of the death of a youthful offender, the sentencing circuit court and the Parole Board shall be notified.

(8) If a fatality occurs in either a foster home, psychiatric unit or hospital or private child care facility, and parental rights are intact, efforts shall be made to immediately notify the parents. The judge of the committing court and the guardian ad litem for the deceased child shall be informed of the fatality in writing within three (3) working days after receipt of the report.

(9) Public disclosure may occur in a case of child abuse or neglect that has resulted in a child fatality or near fatality as governed by 1998 Ky. Acts ch. 303, sec. 2(6).

(10) Funeral arrangements shall remain the responsibility of the natural parents unless parental rights have been terminated.

(a) Staff shall explore with the natural parents their ability to accept financial responsibility for the funeral. Personal and family resources, including trust fund and insurance in the name of the child, shall be exhausted prior to approval of department funds for funeral and burial expenses. Costs shall have prior approval by the appropriate level of supervision.

(b) The selection of a funeral home, mortician, casket, and burial lot shall be based on estimates of cost which are reasonable and on consideration of the choice of the natural parents.

(c) Clothing for burial may be provided by the natural family, foster family, or may be purchased by the department staff.

(d) Flowers may be selected by the department staff and billed to the department.

(e) Arrangements for religious services may be made with a clergyman of the faith of the natural parents. If the faith of the natural parents is unknown, a clergyman of the faith of the foster parents may conduct services.

Section 15. Determining the Validity of the Report. After the initial investigation is completed pursuant to Section 7 of this administrative regulation, the social worker shall determine the validity of the report and submit the findings within thirty (30) working days of the receipt of the report from the reporting person, unless there are extenuating circumstances which are documented in the narrative. The family services office supervisor or designee shall review and evaluate the findings of the investigation.

Section 16. Genial Registry. The central registry consists of a list of names of perpetrators in substantiated cases of child abuse and neglect in which the right of the appeal has been waived or the initial finding has been upheld.

(1) Reports that are found to be substantiated, shall include:

(a) Both child and alleged perpetrator demographics;

(b) Specific characteristics relating to the report;

(c) Type of report; and

(d) Status and relationship of alleged perpetrator to child involved.

(2) The only information that shall be released from the child abuse, neglect, or dependency central registry is statistical information. Social agencies demonstrating a legitimate interest may be told if a case exists in the registry, but all requests for details related to that case shall go through open records process.

Section 17. Photographs. Photographs may be taken of a child during a protective service investigation without parental consent. If it appears that photographs of an abused or neglected child is necessary for proof of abuse or neglect, it is advised that law enforcement take the photographs. If a family services worker takes the photographs, there shall be a witness and documentation made of the subject, date, and witnesses to the photograph.

Section 18. Case Planning. (1) If a case is to be opened, a maximum of fifteen (15) working days shall be allowed to open the case and complete the case plan.

(a) Priority for opening cases shall be given to cases in which the child is at greatest risk for harm.

(b) Within ten (10) working days of the decision to open a case, the family services office supervisor shall assign or transfer the case

for treatment.

(2) The case plan shall be based on assessment and goal formation. It shall include a limited number of attainable, specific objectives agreed upon between the social worker and the family. The case plan shall take into account the following:

(a) The assets and strengths of the family unit and its members;

(b) The options, priorities and needs of the family unit and its members;

(c) The clarification and definition in behavior-specific terms of what needs to change and what new skills need to be learned;

(d) The identification and impact of community forces over which the family may have little or no control;

(e) The opinions of expert consultants regarding medical, mental health, legal and other factors;

(f) The input from referring agencies; and

(g) The resources available within the agency and the community and delineation of roles and functions to bring about the specified changes.

(3) The social worker shall develop a treatment plan designed to provide a safe environment for the child and engage the commitment and cooperation of the family. Family members and children of appropriate age shall be encouraged to participate in the development and updating of case plans.

(4) A copy of the case plan shall be given to the parent or caretaker. The case plan shall be reviewed by the family, worker and supervisor, to include case closure assessment no less frequently than every six (6) months.

(5) A DSS-154, "Service Complaint", shall be given to the family advising them of the right to a fair hearing in compliance with 922 KAR 1:320.

(6) If adoption becomes the goal, case planning and service delivery shall continue until the termination of parental rights judgment order is received.

Section 19. Service Delivery. Service delivery shall be provided as outlined and stated in the case plan. Service delivery shall encompass identified expectations of the family, staff and the implementation of resources in the community. Service recordings shall be completed within thirty (30) days of the contact and shall reflect progress toward treatment goals.

Section 20. Case Closure. (1) The decision to close a case which has received services shall be based on evidence that the original factors resulting in the abuse, neglect or dependency have been resolved to the extent that the family can protect the child and can, at least minimally, meet the needs of the child. A child protective services case shall not be closed if withdrawal of services places the child in danger. Consideration for closure of a child protective service case may occur if the following conditions are met:

(a) The child is no longer in need of protection;

(b) The goals have been achieved; or

(c) The client is not making progress toward treatment goals and there are no legal grounds for intervention.

(2) The closing summary of the child protective services case shall be included in the case record. A brief narrative regarding the case and the reasons for closure shall be entered. The summary may include:

(a) Number of months of child protective services;

(b) Agencies still involved in the case;

(c) Assessment of family functioning and of conditions that have changed to make closure possible;

(d) Reason and date of closure.

(3) Notification to client of closure with a DSS-154-A shall be documented in the case pursuant to 922 KAR 1:320.

Section 21. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) DSS-115, "Suspected Abuse, Neglect, Dependency or Exploitation Reporting Form", "July, 1994", Cabinet for Families and Children;

(b) DSS-150, "Child Protection Investigation Results", "July, 1994", Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the

Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: November 21, 2000

FILED WITH LRC: November 28, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on, January 23, 2001 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 January 16, 2001, 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: Kellie Peace, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the mechanism for implementation of the Multiple Response process pursuant to HB 204 enacted during the 2000 General Assembly including defining high and low risk; mandates assessment to clarify abuse, neglect or dependency pursuant to KRS 620.030; and requires completion of the Continuous Quality Assessment on every child protective services investigation or family-in-need-of-services assessment.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 194B.050(1), 605.150, 620.180 and HB 204 enacted during the 2000 General Assembly and codified at KRS 620.030, 620.040, and 620.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendments to 922 KAR 1:330, Child protective services result in compliance with HB 204 of the 2000 Session of the General Assembly codified at KRS 620.030, 620.040 and 620.050.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This revised administrative regulation complies with the legislative intent of HB 204 of the 2000 Session of the General Assembly.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish requirements regarding the Multiple Response process pursuant to HB 204 enacted during the 2000 Session of the General Assembly codified at KRS 620.040. The regulation mandates assessment to clarify abuse, neglect or dependency pursuant to KRS 620.030, requires continuous quality assessment in every investigation or family-in-need of services assessment; defines high and low risk in the new Multiple Response Matrix process; removes Section 14, Section 18, and Section 19. The cabinet shall promulgate new topical regulations under 922 KAR 1:420 for child fatality or near fatality investigations and 922 KAR 1:430 for child protective services in-home case planning and service delivery.

(b) The necessity of the amendment to this administrative regulation: The proposed administrative regulation, 922 KAR 1:330, Child protective services, is required to implement HB 204 passed during the 2000 Session of the General Assembly. This regulation establishes requirements pertaining to the Multiple Response process.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to HB 204, this administrative regulation establishes a mechanism for implementation of the Multiple Response process.

cess.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation specifies requirements for a Multiple Response to reports of child abuse, neglect and dependency. In conjunction with the statutes, this process should improve service delivery in the area of child protective services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected include all children reported to the Cabinet for Families and Children for a referral of suspected child abuse, neglect, or exploitation. Approximately 45,000 children per year are involved in child protective service investigations. Alleged perpetrators of child abuse or provided due process hearings in accordance with KRS Chapter 13B.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment implements a new safety and risk assessment process to be implemented at the time of intake and implements the Multiple Response Matrix based upon the severity of a report.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No increase since its streamlines the current intake process as specified in item (4).

(b) On a continuing basis: No increase:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds and Social Services Block Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funding nor fees established directly or indirectly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 5106a.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate, this regulation is being amended to include:

a. Implementation of the intake, assessment, screening and investigation of reports of abuse and neglect of children within the Multiple Response process.

b. Improves the use of multidisciplinary teams and interagency protocols to enhance investigations.

c. Improving legal preparation and representation, including procedures for appealing and responding to appeals of substantiated reports of abuse and neglect.

d. Enhancing the general child protective system by improving risk and safety assessment tools and protocols.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 USC 5106a the state agency responsible for investigation or assessment of reports of child abuse and neglect shall be required to implement the intake, assessment, screening and investigation of reports of abuse and neglect as described in 2a above; include procedures for appealing and responding to appeals as described in 2c above and enhancing the general child protective system by improving risk and safety assessment tools.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No, the above mentioned changes in policy will be applicable throughout the state for all children reported to have been abused, neglected or dependent. Therefore, no stricter requirements or responsibilities are imposed than those of the federal mandate.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standard than the federal mandate.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 2000

REVENUE CABINET
Department of Law
Division of Tax Policy
(New Administrative Regulation)

103 KAR 5:160. Property valuation administrator office employees: payment of leave upon separation.

RELATES TO: KRS 132.370

STATUTORY AUTHORITY: KRS 131.130(1), 132.370(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.370, as amended by the 2000 General Assembly, requires the Revenue Cabinet to promulgate administrative regulations which allow property valuation administrators and their deputies to receive lump-sum payments for accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death.

Section 1. Payment of Annual Leave and Compensatory Time Upon Separation. (1) If a property valuation administrator or deputy property valuation administrator is separated from employment as a result of termination, resignation, retirement, or death, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by 101 KAR 3:015(2)(h). Following payment of annual leave upon separation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(2) A property valuation administrator or deputy property valuation administrator who reverts to the classified or unclassified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated annual leave in the receiving agency.

(3) A property valuation administrator or deputy property valuation administrator may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if the successor employer has agreed to credit him with an equal amount of annual leave.

(4) Upon separation from state service, a property valuation administrator or deputy property valuation administrator shall be paid for all unused compensatory time at the greater of the:

(a) Regular hourly rate of pay; or

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

(5) Upon the death of a property valuation administrator or deputy property valuation administrator, his estate shall be entitled to receive a lump sum for the unused portion of his accumulated annual leave and compensatory time.

F. MICHAEL HAYDON, Secretary

APPROVED BY AGENCY: December 14, 2000

FILED WITH LRC: December 14, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed regulation shall be held on January 30, 2001 at 1 p.m. in Training Room A, Third Floor, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 2001 of their intent to attend. If no notification of intent to attend the hearing is received by January 23, 2001, 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: Nick Kearney, Tax Consultant, Division of Tax Policy, Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601; Telephone: (502) 564-6843; FAX: (502) 564-9565; EMAIL:

nick.kearney@mail.state.ky.us.

REGULATORY IMPACT ANALYSIS

Contact Person: Nick Kearney

(1) A brief summary of:

(a) What this administrative regulation does: This regulation provides for property valuation administrators (PVAs) and deputy PVAs to be paid their accrued annual leave and compensatory time upon separation from service.

(b) The necessity of this administrative regulation: KRS 132.370(9) requires the Revenue Cabinet to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: House Bill 824, passed during the 2000 Session of the General Assembly, amended KRS 132.370 to mandate that this regulation be promulgated.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will ensure compliance with KRS 132.370.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: NA, new regulation.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: PVA deputies in all Kentucky counties will be affected by this regulation. Only PVAs who are former deputies will be affected, since PVAs do not accrue annual leave or compensatory time.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new: PVAs and deputy PVAs will be paid for the leave which they earn but do not use.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Minor costs incurred in information dissemination and training.

(b) On a continuing basis: Based on an analysis of employment records of the past four years, it is estimated that a general fund impact of \$50,000 to \$70,000 per year on the total PVA office budget would be experienced as a result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The regulation can be administered within present administrative framework and no fees are requested.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not increase any fees.

(9) Tiering: Is tiering applied? This regulation applies to all PVA office employees. Consequently, tiering was not applied.

FISCAL NOTE

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

2. State what unit, part or division of local government this administrative regulation will affect: Only PVA offices will be affected.

3. State the aspect or service of local government to which this administrative regulation relates: This regulation relates indirectly to the maintenance of property tax assessments by establishing rules for personnel in PVA offices.

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. No noticeable change in local expenditures or revenues is expected. The fiscal impact of HB 824 (2000) was listed as "indeterminable because it is unknown how many Property Valuation Administrators and Deputies will separate from employment during a fiscal year and the value of the annual leave and compensatory time the employees may have accrued." Based on an analysis of employment records of the past four years, it is estimated that a general fund impact of \$50,000 to \$70,000 per year on the total PVA office budget would be experienced as a result of this regulation.

Expenditures (0)
Revenues (0)

KENTUCKY RETIREMENT SYSTEMS (New Administrative Regulation)

105 KAR 1:300. Determination of service credit for classified employees.

RELATES TO: KRS 78.615

STATUTORY AUTHORITY: KRS 61.645(9)(e), 78.615

NECESSITY, FUNCTION, AND CONFORMITY: 2000 Ky. Acts ch. 299, sec. 1 creates a new calculation for determination of retirement service credit for classified employees of local school boards and requires the Board of Trustees of the Kentucky Retirement Systems to promulgate an administrative regulation to allow classified employees of local school boards who work less than a complete school year to purchase service credit to complete the year. This administrative regulation establishes the formulas to be used in determining service credit and for the purchase of service credit.

Section 1. For school years beginning July 1, 2000 and after, upon the employee's completion of the school year, termination or death, whichever is earlier, the retirement system shall determine each employee's annual service credit as follows:

(1)(a) The employee's actual days worked, as reported by the school board, shall be divided by twenty (20) to determine the number of months and fractional months worked.

(b) The employee's total wages shall be divided by the hourly rate reported by the school board to determine the total number of hours worked.

(c) The employee's total hours shall be divided by the employee's months and fractional months worked to determine if the employee averaged at least eighty (80) hours per month.

(2) If the employee does not average at least eighty (80) hours per month, the service credit shall be disallowed and all employer and employee contributions shall be refunded. Months in which the employee worked eighty (80) or more hours may be purchased as provided in KRS 61.552.

Section 2. For school years beginning July 1, 2000 and after, each school board employee whose employment averages eighty (80) or more hours per month over their actual days worked as determined in Section 1 of this administrative regulation, shall be credited with total service credit for the school year determined as follows:

(1) If the employee was contracted to work at least 185 days and worked at least 180 days, the employee shall be credited with twelve (12) months of service credit.

(2) If the employee worked fewer than 180 days of a 185 day contract or if the employee was contracted to work fewer than 185 days, the employee shall receive months of service credit determined by dividing the actual number of days worked by 185 and multiplying the percentage by twelve (12) months. The number of months of service shall be rounded to the nearest whole month, except that the employee shall not receive twelve (12) months unless the employee works 185 or more days during the school year.

(3) If employee retires prior to the end of the fiscal year, the employee's service credit for the year shall be reduced by eight (8) percent of twelve (12) for each month prior to July. The employee shall not receive fewer months than the number determined by dividing the employee's actual days worked, as reported by the school board, by

twenty (20) and rounding to the nearest whole month.

Section 3. (1) For the school year beginning July 1, 2000 and after, if the employee worked fewer than 180 days of a 185 day contract, the employee may purchase months needed to complete the year by paying 100 percent of the actuarial cost of the service.

(2) The actuarial cost shall be determined using the delayed contribution payment in KRS 78.510(30) except that:

(a) For determining delayed contribution payments for classified employees of school boards, the cost shall be based on the classified employee's final compensation as of the date payment is due;

(b) For determining delayed contribution payments for employees participating in one of the other state administered retirement plans who are eligible to purchase service under this section, the higher of the employee's current rate of pay, final rate of pay or final compensation shall be used; and

(c) For service credit purchased under this section, the employee shall pay 100 percent of the cost calculated under delayed contribution payment.

Section 4. If the employee was contracted to work fewer than 185 days and does not earn twelve (12) months service, the employee may purchase additional months of service as provided under KRS 61.545.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: November 16, 2000

FILED WITH LRC: December 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2000, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William P. Hanes, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-4646, facsimile (502) 564-5656.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: William P. Hanes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the method for determining retirement service credit for noncertified employees of local school boards under KRS 78.615 for school years ending June 30, 2001 and after.

(b) The necessity of this administrative regulation: The provision contained in KRS 78.615(1)(c) which became law July 14, 2000, changes the way retirement service credit will be awarded and provides for certain noncertified employees to receive 12 months credit for completing a school year. The provision also required promulgation of an administrative regulation to allow purchase of service credit to complete school years for certain noncertified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation bases the awarding of service credit on the 185-day school year as provided in the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish a consistent formula for determining retirement service credit based on the days worked in the employee's contract for the school year.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect approximately 30,000 to 40,000 noncertified employees of local school boards who current earn fewer than 12 months each year.

(4) Provide an assessment of how the above group or groups will be impacted either by the implementation of this administrative regulation, if new, or by the change if it is an amendment: A full year of retirement service credit will be awarded if the noncertified employee is contracted to work 185 days and works at least 180 or if the employee is contracted for few than 185 days, but works 185 or more days. Other employees will receive retirement service credit up to a maximum of 11 months based on the ratio of actual days worked to 185 days.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation. The method for determining service credit in this administrative regulation requires no additional paperwork.

(b) On a continuing basis: There is no ongoing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The actuarial cost will be paid through the employer rate for nonhazardous members of the County Employees Retirement System.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessitated by this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is applied. The service credit awarded is prorated based on the ratio of the actual days worked to 185. Thus most noncertified employees of school boards, regardless of the number of days worked, will accrue more months of retirement service credit per year than under the previously applied formula.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation affects all local public school districts in Kentucky.

3. State the aspect or service of local government this administrative regulation will affect. This administrative regulation affects the number of months of retirement service credit accrued by noncertified employees.

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: This administrative regulation does not impose additional reporting requirements on the affected school districts.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:140. Emergency management funding.

RELATES TO: KRS 39A.050(2)(i)(j), 39C.010, 39F.100, 42 USC 5170(c), 5172, 5173, 5196, 50 USC 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 39F.020(5), 42 USC 5170(c), 5172, 5173, 5196, 50 USC 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(i)(j) authorizes the division to provide funds to a city, county, urban-county, or charter county government to support a local emergency management agency and comprehensive emergency management program. This administrative regulation establishes eligibility requirements to be met by a city, county, urban-county, or charter county government for emergency management funding.

Section 1. Definitions. (1) "Applicant" means a local emergency management agency of a city, county, urban-county, or charter county government established pursuant to KRS 39B.010 and 106 KAR 1:230.

(2) "Chemical Stockpile Emergency Preparedness Program Fund" means the funding established in 50 USC 1521.

(3) "Emergency management funding" means the funds defined in subsections (2), (4), (5), (6), and (7) of this section.

(4) "Federal Disaster and Emergency Assistance Fund" means the funding granted by the Federal Emergency Management Agency to the division under 42 USC 5170(c), 5172 and 5173.

(5) "Federal Emergency Management Assistance Fund" means the funding granted by the Federal Emergency Management Agency to the division under 42 USC 5196.

(6) "Rescue Aid Fund" means the fund established in KRS 39F.100.

(7) "Supplementary State Fund" means the fund established in KRS 39C.010 and 39C.020.

Section 2. Eligibility. (1) To be eligible for emergency management funding, a city, county, urban-county, or charter-county government shall:

(a) Submit documentation of the establishment of a local emergency management agency pursuant to 106 KAR 1:230;

(b) Submit documentation of the appointment of a local director pursuant to 106 KAR 1:240;

(c) Submit a signed memorandum of agreement issued by the Division of Emergency Management;

(d) Apply for emergency management funding through a local director who shall:

1. Ensure use of an appropriate application form provided by the division;

2. Ensure the official name of a local emergency management agency is used to specify the applicant in an application;

3. Exercise signatory authority established in KRS 39B.030(9) to execute an application and a memorandum of agreement issued by the division;

4. Maintain a file of an application and supporting material; and

5. Submit all applications, memorandum of agreement, and supporting materials prepared for a city, county, urban-county, or charter-county government.

(2) A local director shall submit the materials required in subsection (1) of this section of this administrative regulation to an area manager for transmittal to the director.

Section 3. Compliance Requirements. In maintaining eligibility of a city, county, urban-county, or charter-county government for emergency management funding, a local emergency management agency shall fully comply with:

(1) 106 KAR 1:150;

(2) 106 KAR 1:170;

(3) 106 KAR 1:200;

(4) 106 KAR 1:210;

- (5) 106 KAR 1:220;
- (6) 106 KAR 1:360; and
- (7) 106 KAR 1:380.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

- (1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes eligibility requirements for a local government for emergency management funding.

- (b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39A.050(2)(i)(j) authorizes the division to require compliance with state and federal funding and program requirements.

- (c) How this administrative regulation conforms to the content of the authorizing statutes: The eligibility requirements established through this administrative regulation will ensure compliance with state and federal funding and program requirements.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure eligibility criteria are specified and applied for a local government to participate in state and federal emergency management funding.

- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

- (b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

- (c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

- (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 county governments and 435 city governments.

- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to provide documentation to substantiate eligibility for

emergency management funding and comply with an application criteria as a condition of eligibility for emergency management funding.

- (5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

- (b) On a continuing basis: Estimated cost is less than \$100.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

- (9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The general type of administrative actions required in this administrative regulation applies equally to all local governments impacted.

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: Emergency management.

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

- 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 (+/-): 0

Expenditures (+/-): \$0

Other Explanation: The purpose of this administrative regulation is to establish eligibility requirements for local governments for emergency management funding. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:150. Emergency Management Assistance Fund application.

RELATES TO: KRS 39A.050(2)(i)(j), 39C.060(1), 42 USC 5196, 50 USC 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 USC 5196, 50 USC 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.060(1) authorize the division to require a local emergency management agency to submit an application to request funding from the Emergency Management Assistance Fund. This administrative regulation establishes the application requirements to be met by a local emergency management agency applying for financial assistance from the EMA Fund.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Section 1. Definition. "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined in 106 KAR 1:140, Section 1(2), (5), and (7).

Section 2. Application Requirements. To apply for financial assistance from the Emergency Management Assistance Fund, a local director shall:

- (1) Complete and submit:
 - (a) KyEM Form 152, "Administrative and Personnel Data";
 - (b) KyEM Form 153, "Local EMA Budget Request and Status Report"; and
 - (c) KyEM Form 154, "Local Emergency Management Work Plan".
- (2) Comply with the application requirements specified in "Local Program Guidance" issued by the Division of Emergency Management.

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

- (a) "Administrative and Personnel Data, September 2000";
 - (b) "Local EMA Budget Request and Status Report, September 2000";
 - (c) "Local Emergency Management Work Plan, September 2000"; and
 - (d) "Local Program Guidance, September 2000".
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes application requirements to be met by a local emergency management agency applying for financial assistance from the EMA fund.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure an application procedure exists for a local emergency management agency requesting financial assistance from the EMA fund.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The application requirements established through this administrative regulation will ensure a local emergency management agency complies with state and federal funding and

program requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will institute an application procedure to assist a local emergency management agency to request financial assistance from the EMA fund within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management directors.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to complete and submit an application when requesting financial assistance from the EMA fund.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The application requirements for requesting financial assistance from the EMA fund apply equally to all local directors in the Commonwealth.

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: Emergency management.
3. State the aspect or service of local government to which this administrative regulation relates: Public safety.
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 (+/-): 0
Expenditures (+/-): \$0

Other Explanation: The purpose of this administrative regulation is to establish application requirements to be met by a local emergency management agency applying for financial assistance from the EMA fund. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

**GENERAL GOVERNMENT
Department for Military Affairs
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:160. Emergency Management Assistance Fund reimbursement claim.

RELATES TO: KRS 39A.050(2)(j), 39C.070(1), 42 USC 5196, 50 USC 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 USC 5196, 50 USC 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.070(1) require a local emergency management agency to submit a monthly reimbursement claim, with supporting documentation, to request financial reimbursement from the Emergency Management Assistance Fund. This administrative regulation establishes a reimbursement claim form and a time report form required to request reimbursement from the EMA Fund.

Section 1. Definitions. (1) "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined in 106 KAR 1:140, Section 1(2), (5), and (7).

(2) "Reimbursement claim form" means KyEM Form 160, "Local Emergency Management Assistance Claim Form".

(3) "Supporting documentation" means a vendor invoice or paid receipt.

(4) "Time report form" means KyEM Form 159, "Local Emergency Management Agency Time Report."

Section 2. Reimbursement Documentation. To request reimbursement from the Emergency Management Assistance Fund, a local director shall submit:

(1) A completed KyEM Form 159, "Local Emergency Management Agency Time Report";

(2) A completed KyEM Form 160, "Local Emergency Management Assistance Claim Form"; and

(3) Supporting documentation.

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

(a) "Local Emergency Management Agency Time Report, September 2000"; and

(b) "Local Emergency Management Assistance Claim Form, September 2000".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by

that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a reimbursement claim form and a time report form to be completed and submitted by a local director to request financial reimbursement from the EMA fund.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because a local director is required by KRS 39C.070(1) to submit a reimbursement claim and supporting documentation to the division to request financial assistance from the EMA fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The reimbursement claim form and time report established through this administrative regulation will ensure compliance with state and federal funding and program requirements as required by KRS 39A.050(2)(j).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide standardized forms to expedite the reimbursement process to local emergency management agencies within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management directors.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to complete and submit a monthly reimbursement claim form and time report to request reimbursement from the EMA fund.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Divi-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

sion of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements for requesting financial assistance through reimbursement from the EMA fund applies equally to all local directors in the Commonwealth.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): \$0

Other Explanation: The purpose of this administrative regulation is to establish a reimbursement claim form and time report form to be completed and submitted by a local director to request reimbursement financial assistance from the EMA fund. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:170. Local Emergency Management Agency Program quarterly report.

RELATES TO: KRS 39A.050(2)(j), 39C.080(2), 42 USC 5196, 50 USC 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 USC 5196, 50 USC 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.080(2) require a local emergency management director to submit a quarterly work activity progress report to the division. This administrative regulation establishes the forms and supporting documentation to be submitted by a local director to meet the quarterly reporting requirement.

Section 1. Quarterly Report Documentation Requirements. To report quarterly work activity, a local director shall submit no later than January 15, April 15, July 15 and October 15:

(1) A completed KyEM Form 154, "Local Emergency Management Work Plan", incorporated by reference in 106 KAR 1:150;

(2) A completed KyEM Form 156, "Local Emergency Management Work Plan Progress Report"; and

(3) The minimum required documentation for a scheduled work plan objective as specified in "Local Program Guidance" incorporated by reference in 106 KAR 1:150.

Section 2. Incorporation by Reference. (1) "Local Emergency Management Work Plan Progress Report, September 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes work activity progress report forms to be used by a local director to meet quarterly reporting requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39C.080(2) requires a local director to submit quarterly work activity reports to the division.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes reporting forms to ensure compliance with state and federal funding program requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a local director has adequate forms to complete the quarterly reporting requirements within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: This administrative regulation affects approximately 120 local emergency management directors in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to complete and submit the work activity progress report forms established in this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirement to complete and submit quarterly work activity progress report forms, and supporting documentation, established in this administrative regulation apply equally to all local directors in the Commonwealth.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): \$0.

Other Explanation: The purpose of this administrative regulation is to establish work activity report forms to be completed and submitted quarterly by a local director. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:180. Project application.

RELATES TO: KRS 39A.050(2)(j), 39C.070(2), 42 USC 5196, 50 USC 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 USC 5196, 50 USC 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.070(2) authorize the division to require a local

emergency management agency to submit a project application, with supporting material, to request financial assistance from the Emergency Management Assistance (EMA) Fund for administrative or operational equipment and for capital and procurement projects. This administrative regulation establishes an application form for use to request financial assistance from the EMA Fund for a project.

Section 1. Definitions. (1) "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined in 106 KAR 1:140, Section 1(2), (5), and (7).

(2) "Project" means a purchase or procurement of administrative or operational equipment, or a capital expenditure, in excess of \$500.

(3) "Project application" means a completed KyEM Form 170, "Division of Emergency Management Project Application".

Section 2. Project Application Requirement. To apply for financial assistance from the Emergency Management Assistance Fund for a project, a local director shall submit:

(1) A completed project application; and

(2) The following documentation for any project application requesting financial assistance from the fund defined in 106 KAR 1:140, Section 1(2):

(a) Unpaid vendor invoice; or

(b) Purchase order approved by a fiscal court; or

(c) Signed contract with a vendor.

Section 3. Incorporation by Reference. (1) "Division of Emergency Management Project Application, September 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an application form to request financial assistance from the EMA fund for a project involving purchase of equipment or a capital and procurement project by a local emergency management agency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39C.070(2) requires a

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

local director to submit a project application to request financial assistance with a project from the EMA fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The project application form established through this administrative regulation will assist in ensuring compliance with state and federal funding and program requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a standardized project application form for use by a local director to expedite a request for financial assistance within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management directors in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to complete and submit a standard project application form, with supporting documentation, to request financial assistance from the EMA fund for a project.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The project application process for requesting financial assistance from the EMA fund apply equally to all local directors in the Commonwealth.

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: Emergency management.

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

4. Estimate the effect of this administrative regulation on the ex-

penditures 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 (+/-): 0

Expenditures (+/-): \$0

Other Explanation: The purpose of this administrative regulation is to establish an application form for use by a local emergency management agency to request financial assistance from the EMA fund for purchase of administrative equipment or for capital and procurement projects. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:190. Project application reimbursement.

RELATES TO: KRS 39A.050(2)(j), 39C.070(2), 42 USC 5196, 50 USC 1521

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.100, 42 USC 5196, 50 USC 1521

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(j) and 39C.070(2) authorize the division to require a local emergency management agency to submit a reimbursement claim, with supporting documentation, to request financial reimbursement for an approved project application from the Emergency Management Assistance (EMA) Fund. This administrative regulation establishes the reimbursement procedure required to request reimbursement from the EMA Fund for an approved project application established in 106 KAR 1:180.

Section 1. Definition. "Emergency Management Assistance Fund" or "EMA Fund" means the funds defined in 106 KAR 1:140, Section 1(2), (5), and (7).

Section 2. Reimbursement Documentation. To apply for reimbursement from the EMA Fund, a local director shall submit the following to an area manager:

(1) A completed KyEM Form 160, "Local Emergency Management Assistance Claim Form" incorporated by reference in 106 KAR 1:160; and

(2) A vendor invoice or paid receipt.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency

Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a reimbursement claim form for use a local director to request reimbursement of expenditures associated with an approved project application.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39C.070(2) requires a local director to submit a claim to request reimbursement of project application expenditures from the EMA fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the project application claim form to ensure compliance with state and federal funding and program requirements and provide a method for proper accounting of EMA fund reimbursement to a local emergency management agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a standardized project application reimbursement form and procedure exists to expedite reimbursement of a local emergency management agency within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management directors.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to complete and submit a project application reimbursement claim form and supporting documentation to request reimbursement of an approved project application.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or

indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirement to complete and submit a project application reimbursement claim form and supporting documentation to request reimbursement of an approved project application applies equally to all local directors in the Commonwealth.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): \$0

Other Explanation: The purpose of this administrative regulation is to establish a reimbursement claim form to request reimbursement of expenditures associated with an approved project application. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT CABINET Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:200. Local plan.

RELATES TO: KRS 39A.070(5), 39B.020(3)(d), 39B.030(3), 39B.060, 39C.050(3), 39E.010(1), 39E.110(1)(a), (e), (f), 39E.150, 39F.190, 42 USC 11001 to 11050

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39E.040(6), 39E.080(4), 42 USC 11002(c), 11003(c)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39B.030(3) requires a local emergency operations plan be developed consistent with administrative regulations promulgated by the division. This administrative regulation establishes the requirements for processing a local plan.

Section 1. Definitions. (1) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(2) "Local plan" means the written emergency operations plan of a city, county, charter county, or urban-county government pursuant to KRS Chapters 39A to 39F.

Section 2. Local Plan Requirement. (1) A local plan shall:

(a) Specify title headings for a basic plan and annexes corresponding to the Kentucky Emergency Operations Plan;

(b) Specify all known hazards which may impact a local jurisdiction and detail an analysis of each hazard;

(c) Catalogue emergency management and response personnel, equipment, facilities, supplies, materials, and services;

(d) Name the public, private, and volunteer personnel, agencies, entities, and departments comprising the membership of a local disaster and emergency services organization;

(e) Describe the duties and responsibilities of each local disaster and emergency services organization member and participant assigned within a local plan; and

(f) Incorporate incident command or management system proce-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

dures into the direction and control annex.

(2) A local plan format and content shall comply with:

(a) Division of Emergency Management planning guidance entitled "Planning Handbook, 1999";

(b) Kentucky Emergency Response Commission planning guidance entitled "Title III Plan Guidance, December 1999"; and

(c) Where applicable, guidance published jointly by the Federal Emergency Management Agency and the Department of the Army entitled "Planning Guidance for the Chemical Stockpile Emergency Preparedness Program, May 17, 1996."

Section 3. Local Plan Process. (1) Annually, no later than June 30 of each federal fiscal year, a local director shall complete the processing of a local plan.

(2) To process a local plan, a local director shall:

(a) Review an existing local plan;

(b) Consult a local emergency planning committee, a local search and rescue coordinator, elected officials, department heads, agency chiefs, and public or private officers and leaders, or their designees, who are members or participants of a local disaster and emergency services organization;

(c) Prepare a local plan draft;

(d) Submit a local plan draft to an area manager for concurrence review;

(e) Submit corrected, amended, revised, or supplemental plan material specified and requested by an area manager no later than fifteen (15) calendar days following receipt of a written request;

(f) Upon receipt of written concurrence of the director, submit a local plan draft for official adoption as specified in KRS 39B.030(3); and

(g) Distribute an officially adopted local plan to disaster and emergency services organization plan custodians, a chairman of a local emergency planning committee, a local search and rescue coordinator, an area manager, and the director.

(3) A local emergency planning committee, through its chairman, shall:

(a) Review information reported under KRS 39E.120, 39E.210, and 39E.220 within thirty (30) days of receipt;

(b) No later than sixty (60) days following receipt of information specified in paragraph (a) of this subsection:

1. Prepare and submit a local plan draft pursuant to KRS 39E.150 through a local director, to an area manager, for transmittal to the director; and

2. Upon receipt of written approval of a local plan draft from the director, submit the approved local plan draft to a local director for official adoption and distribution;

(c) No later than June 30 of each federal fiscal year:

1. Review an existing local plan required by KRS 39E.150; and

2. Prepare and submit the following through a local director, to an area manager, for transmittal to the director:

a. An updated local plan draft; or

b. A written notice that an existing local plan has been reviewed and is current as of the date of the notice.

(4) A local search and rescue coordinator shall:

(a) Prepare and submit a local plan draft pursuant to KRS 39F.190 to a local director;

(b) No later than June 30 of each federal fiscal year:

1. Review an existing local plan required by KRS 39F.190; and

2. Prepare and submit the following to a local director:

a. An updated local plan draft; or

b. A written notice that an existing local plan has been reviewed and is current as of the date of the notice.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Planning Handbook, 1999";

(b) "Title III Plan Guidance, December 1999"; and

(c) "Planning Guidance for the Chemical Stockpile Emergency Preparedness Program, May 17, 1996".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Ken-

tucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a process for developing and maintaining a local emergency operations plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapters 39A to 39F requires a local emergency operations plan be developed and maintained.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The standardization of the local planning process established through this administrative regulation will ensure the preparation and maintenance of a local emergency operations plan consistent with the Kentucky Emergency Operations Plan and Division of Emergency Management planning guidance as required by KRS Chapters 39A to 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a local planning process is administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management directors, 118 local emergency planning committees, and 120 search and rescue coordinators in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to process new or updated local plans annually or whenever a specific plan addition or update is needed. The planning process is consultative in nature and requires deliberation and corroboration among all groups. The time required to complete the planning process will vary among groups but generally will be of limited duration. The resources required to complete the planning process are within the existing capability of most groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? Yes. The Division of Emergency Management has applied tiering within this administrative regulation. The use of tiering is necessary to differentiate planning requirements being imposed on more than one class of the regulated entity, i.e., local emergency management directors, local emergency planning committees, and local search and rescue coordinators. Local emergency management directors are responsible for planning activities to process an entire local emergency operations plan. Local emergency planning committees engage in planning activities related only to a local plan's hazardous materials annex. Local search and rescue coordinators engage in planning activities related only to a local plan's rescue services annex. This administrative regulation organizes and separates the necessary planning requirements among the three classes of the regulated entity to ensure each class satisfies their own respective planning requirement in a systematic manner without duplication, overlap, or waste of resources. Tiering reduces the planning requirements imposed on local emergency planning committees and local search and rescue coordinators since both classes have limited planning responsibilities. The planning requirements for local directors, local emergency planning committees, and local search and rescue coordinators will be achieved in compliance with applicable statutes and their intent. Applicable statutes do not specify a time period for completion of the various plan requirements or process steps in this administrative regulation; however, the specific requirements for each class of regulated entity are coordinated to allow a 90 day period of time for delay in completing plan processing requirements. The period of 90 days sets an end point in time to ensure the intent of the statutes is met. The applicable statutes specify no authority for levying a fine for noncompliance, but specify a penalty of Class A misdemeanor for violation of an administrative regulation. The applicable statutes specify no authority for levying a fine for noncompliance, but specify a penalty of Class A misdemeanor for violation of an administrative regulation. Tiering within this administrative regulation organizes and separates the necessary planning requirements among the three classes of the regulated entity to ensure each class satisfies their own respective planning requirement in a systematic manner without duplication, overlap, or waste of resources. Multiple planning requirements imposed by various state and federal statutes to more than one class of the regulated entity require tiering within this administrative regulation to organize an effective system of plan processing to meet the requirements and intent of all statutes. State statutes codified in 1998 as KRS Chapters 39A, 39B, 39C, 39D, 39E, and 39F specify multiple planning requirements among more than one class of the regulated

entity which are best addressed in a tiered administrative regulation. The classes of regulated entities include paid, full-time directors, part-time paid directors, volunteer local directors, volunteer local emergency planning committees, volunteer and paid local search and rescue coordinators. These classes have varying levels of administrative capability, staff and equipment resources to support their labors. Uniform application of all planning process requirements to all classes of the regulated entity is unnecessary, inappropriate, and duplicative to the needs being addressed by this administrative regulation. Lack of tiering within this administrative regulation would impose unreasonable and unnecessary work on local emergency planning committees and local search and rescue coordinators in meeting the limited planning requirements imposed by the statutes.

FEDERAL MANDATE ANALYSIS

1. Federal statute or regulation constituting the federal mandate: 42 USC 11003(a)(c)(e).

2. State compliance standard: Requires preparation of a local plan which must be updated annually, submitted to the State emergency response commission for approval, and: identifies facilities subject to the planning requirements; lists extremely hazardous chemicals inventory data; contains facility site sketch, identifies routes likely to be used for transportation of extremely hazardous substances; identifies chemical suppliers; identifies special facilities subject to additional risk due to proximity to facilities subject to the planning requirements; provides procedures for reporting a release and actions to protect the public; identifies emergency equipment resources of local government responders and the covered facility; specifies the level of hazardous materials response training for responders and facility personnel; indicates the exercise schedules of the local community and the facility, outlines an emergency notification scheme, and includes site maps indicating a vulnerable zone around a facility for a worst case release scenario.

3. Minimum or uniform standards contained in the federal mandate: Requires preparation of a local plan which must be updated annually, submitted to the state emergency response commission for approval, and: identifies facilities subject to the planning requirements of the federal mandate; identifies routes likely to be used for transportation of extremely hazardous substances; identifies special facilities subject to additional risk due to proximity to facilities subject to the planning requirements of the federal mandate; identifies methods and procedures for facility owners and operators to take in response to any release of extremely hazardous substances; designates a facility emergency coordinator and a community emergency coordinator; specifies procedures for emergency notification of responders and the public upon the release of hazardous chemicals; identifies methods for determining a release and the area or population likely to be affected; provides a description of emergency equipment at a covered facility and in the community; provides evacuation plans and identifies alternative traffic routes; specifies training programs and schedules for training of local responders; and identifies methods and schedules for exercising the local plan.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Although stated somewhat differently, the state standard is designed to meet the federal standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect: Emergency Management Agency.

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

4. Estimate the effect of this administrative regulation on the ex-

penditures 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 (+/-): 0

Expenditures (+/-): +\$100

Other Explanation: The purpose of this administrative regulation is to establish requirements for processing a local emergency operations plan. Local government revenues are not increased or decreased and expenditures may be increased minimally. There will be no increase in the number of employees or other personnel costs for local government. Existing personnel and resources will implement the plan process requirements of this administrative regulation.

**GENERAL GOVERNMENT
Department of Military Affairs
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:210. Local emergency management training.

RELATES TO: KRS 39A.050(2)(l), 39B.020(3)(d), 39C.050(1), (2)
STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39C.050(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(l) requires the division to institute emergency management training programs. KRS 39B.020(3)(d) requires a local director to attend required training. KRS 39C.050(1), (2) requires local emergency management agency personnel to complete required training. This administrative regulation establishes training requirements for a local director and other local emergency management agency personnel.

Section 1. Definitions. (1) "Emergency Management Development Program" means the training curriculum established in Section 2(2) and (3) of this administrative regulation.

(2) "Emergency management training" means any seminar, workshop, course, class, or instruction conducted, sponsored, specified, offered through, or approved by the division.

(3) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(4) "Local staff member" means a person appointed to a local emergency management agency pursuant to KRS 39B.070(3).

(5) "Successfully complete" means to attend or participate in emergency management training and acquire and submit to the division a copy of an instructor-provided training completion certificate or record.

Section 2. Local Director Training Requirement. (1) Within thirty (30) days of appointment pursuant to KRS 39B.020(1), a local director shall successfully complete an orientation conducted by the division, covering Kentucky's emergency management system and programs administered by local directors in Kentucky.

(2) Within 365 calendar days of appointment pursuant to KRS 39B.020(1), a local director shall successfully complete the following:

(a) A correspondence training course covering basic emergency management program concepts with emphasis on the role of a local director;

(b) A correspondence training course covering incident command/incident management system basic concepts;

(c) A correspondence training course covering mitigation benefits, methods, resources and planning;

(d) A training course of at least four (4) hours covering emergency operations center basic concepts;

(e) A training course, conducted by the division, covering principles of the integrated emergency management system, including interagency teams, coordination methods, and emergency or disaster case studies;

(f) A training course, conducted by the division, covering rapid assessment of disaster scenes and proper damage and reporting procedures;

(g) A training course of at least four (4) hours covering require-

ments and procedures for obtaining and implementing state and federal disaster assistance programs; and

(h) A training course of at least eight (8) hours covering hazardous materials "first responder awareness level" emergency response duties as defined by the U.S. Occupational Safety and Health Administration, to include instruction on employer and community operating procedures.

(3) No later than the first federal fiscal year following participation in the training specified in subsection (2) of this section, a local director shall begin study to successfully complete the following:

(a) A training course, conducted by the division, covering development of a local emergency operations plan consistent with the Kentucky Emergency Operations Plan;

(b) A training course of at least twenty-four (24) hours, covering exercise assessment, design and delivery skills, including a practical application component;

(c) A training course of at least eight (8) hours covering disaster exercise evaluation skills, including a practical application component;

(d) A training course of at least two (2) hours covering local emergency planning committee member duties and Kentucky's system for implementation of the federal "Emergency Planning and Community Right-to-Know Act";

(e) A training course of at least twelve (12) hours covering hazardous materials "first responder operations level" emergency response duties as defined by the U.S. Occupational Safety and Health Administration, to include instruction on Commonwealth of Kentucky hazardous materials response plans; and

(f) A training course, offered or approved by the division, of at least sixteen (16) hours covering the eight (8) component elements of an incident command system/incident management system, to include practical application.

(4) A local director shall successfully complete:

(a) No less than two (2) of the courses specified in subsection (3) of this section in a federal fiscal year until all courses are successfully completed;

(b) All courses of the Emergency Management Development Program within a period of sixty (60) consecutive months following appointment pursuant to KRS 39B.020(1);

(c) The emergency management training conducted annually in each federal fiscal year at a Governor's Emergency Management Workshop; and

(d) No less than thirty-two (32) total hours of emergency management training annually in each federal fiscal year following appointment or reappointment pursuant to KRS 39B.020(1) or 39B.020(3).

Section 3. Local Staff Member Training Requirement. (1) A local staff member shall successfully complete:

(a) The emergency management training specified in Section 2(2) of this administrative regulation within the first twenty-four (24) consecutive months of employment service; and

(b) The emergency management training specified in Section 2(3) of this administrative regulation beginning in the second federal fiscal year of employment service;

(2) A local staff member shall successfully complete:

(a) All courses of the Emergency Management Development Program, within a period of ten (10) consecutive federal fiscal years following appointment; and

(b) No less than twelve (12) total hours of emergency management training annually in each federal fiscal year of employment service.

Section 4. Request for Training Credit. (1) In meeting the annual emergency management training requirement specified in Section 2(4)(d) or 3(2)(b) of this administrative regulation, a local director or local staff member may request credit for training not conducted or sponsored by the division.

(2) To request credit for training not conducted or sponsored by the division, a local director or local staff member shall:

(a) Complete a KyEM Form 300, "Request for Training Credit" for each training course or instructional offering for which credit is requested; and

(b) Submit a completed KyEM Form 300, "Request for Training

Credit", to an area manager for transmittal to the director:

1. No less than thirty (30) calendar days prior to the date of training for which credit is requested; or
2. No less than forty-five (45) days following appointment as a local director, for emergency management training successfully completed prior to appointment as local director.
- (3) A local director or local staff member shall be eligible to receive emergency management training credit under this section when:
 - (a) A completed KyEM Form 300, "Request for Training Credit" is approved, in writing, by the director; and
 - (b) The training approved for credit is successfully completed.

Section 5. Training Documentation. A local director or local staff member shall submit documentation of all successfully completed emergency management training to an area manager within thirty (30) calendar days of receipt following completion of training.

Section 6. Incorporation by Reference. (1) "Request for Training Credit, September 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes training requirements for a local director and local emergency management agency personnel.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapters 39A to 39F requires a local director and local emergency management agency personnel to participate in training required by the division.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The emergency management training curriculum and process established through this administrative regulation will ensure the professional development of a local director and local emergency management personnel as required by KRS Chapters 39A to 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a local director and local emergency management agency personnel are properly trained to perform within the

context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management directors and an unspecified, but limited, number of local emergency management agency personnel.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to attend or participate in, and successfully complete, emergency management training on an annual basis.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(a) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? Yes. The Division of Emergency Management has applied tiering within this administrative regulation. The use of tiering is necessary to differentiate training requirements being imposed on more than one class of the regulated entity, i.e., local emergency management directors and local emergency management staff personnel. Local emergency management directors are responsible for successfully completing a broad series of specific training courses and no less than 32 hours of training annually. Local emergency management staff personnel are responsible for successfully completing a broad series of specific training course and no less than 12 hours of training annually. This administrative regulation organizes and separates the different training requirements among the 2 classes of the regulated entity to ensure each class satisfies their own respective training requirements in a systematic manner. Tiering reduces the training requirements imposed on local emergency management staff personnel since this class of the regulated entity has limited emergency management program responsibilities. The training requirements for local directors and local emergency management agency staff personnel will be achieved in compliance with applicable statutes and their intent. Applicable statutes do not specify a time period for completion of all training requirements in this administrative regulation; however, any specific requirement for each class of regulated entity are considered in the training schedule annually devised by the division to ensure there is no delay in addressing training requirements. The applicable statutes specify no authority for levying a fine for noncompliance, but specify a penalty of Class A misdemeanor

for violation of an administrative regulation. The applicable statutes specify no authority for levying a fine for noncompliance, but specify a penalty of Class A misdemeanor for violation of an administrative regulation. Tiering within this administrative regulation organizes and separates the necessary training requirements among the two classes of the regulated entity to ensure each class satisfies their own respective training requirements in a systematic manner. Multiple training requirements imposed by various state and federal statutes to more than 1 class of the regulated entity require tiering within this administrative regulation to organize an effective method of training delivery to meet the requirements and intent of all statutes. State statutes codified in 1998 as KRS Chapters 39A, 39B, 39C, 39D, 39E, and 39F specify multiple training requirements among more than one class of the regulated entity which are best addressed in a tiered administrative regulation. The classes of regulated entities include paid, full-time directors, part-time paid directors, volunteer local directors, volunteer and paid local emergency management agency staff personnel. These classes have varying levels of work responsibilities and administrative capability. Uniform application of all training requirements to all classes of the regulated entity within the same schedule is inappropriate to the needs of these groups. Lack of tiering within this administrative regulation would impose unreasonable demands on local emergency management staff personnel to meet the entire training requirements imposed by the statutes and this administrative regulation.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): \$100

Other Explanation: The purpose of this administrative regulation is to establish training requirements for local directors and local emergency management agency staff personnel. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT CABINET Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:220. Local exercise.

RELATES TO: KRS 39A.050(2)(l), 39C.050(4), 39E.010(1), 42 USC 11001 to 11050

STATUTORY AUTHORITY: KRS 39A.050(2)(j), (m), 39A.070(3), 39E.040(6), 39E.080(4), 42 USC 11003(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.050(2)(l) requires the division to institute exercise programs. This administrative regulation establishes requirements for exercising a local plan.

Section 1. Definitions. (1) "Exercise" means a test and evaluation of a local plan.

(2) "Federal fiscal year" means a period beginning October 1 of a calendar year and ending September 30 of the following calendar year.

(3) "Full-scale exercise" means a comprehensive test and evalua-

tion of a local plan utilizing a written scenario which requires actual deployment of personnel, equipment, and resources to a simulated emergency.

(4) "Functional exercise" means a limited test and evaluation of a local plan utilizing a written scenario which requires actual and simulated utilization of personnel, equipment, and resources to a simulated emergency.

(5) "Local plan" means the written emergency operations plan of a city, county, charter county, or urban-county government pursuant to KRS Chapters 39A to 39F.

(6) "Tabletop exercise" means a group discussion utilizing a written scenario and a set of prepared questions designed to test and evaluate a local plan.

Section 2. Tabletop Exercise Requirement. A tabletop exercise shall consist of the following:

(1) Development and use of a written scenario based on a hypothetical emergency situation; and

(2) Development and use of written discussion questions worded specifically to test or evaluate the provisions of a local plan.

Section 3. Functional Exercise Requirement. A functional exercise shall consist of the following:

(1) At least twenty-five (25) percent staffing of a primary or alternate local emergency operations center;

(2) An operational test of communications and emergency power equipment in a local emergency operations center;

(3) Use of message forms and status boards in a local emergency operations center;

(4) Development and use of a written scenario based upon one (1) or more hazards specified in a local plan;

(5) Development and use of five (5) or more written exercise objectives;

(6) Testing of seven (7) or more disaster and emergency response functions specified in a local plan;

(7) Development and use of written evaluation criteria;

(8) Designation and use of a lead evaluator; and

(9) Conduct of an exercise critique involving exercise participants.

Section 4. Full-scale Exercise Requirement. A full-scale exercise shall consist of the following:

(1) Completion of all requirements of Section 3 of this administrative regulation, except subsections (1), (5) and (6);

(2) At least seventy-five (75) percent staffing of a primary or alternate local emergency operations center;

(3) Development and use of ten (10) or more written exercise objectives;

(4) Testing of fifteen (15) or more disaster and emergency services response functions specified in a local plan; and

(5) Field deployment of no less than five (5) emergency response and support agencies.

Section 5. Local Exercise Requirement. (1) A local director shall:

(a) Schedule one (1) tabletop exercise and one (1) functional exercise annually, no later than July 15 of each calendar year;

(b) Design and conduct one (1) tabletop exercise and one (1) functional exercise annually, no later than June 30 of each federal fiscal year;

(c) Include the following in a tabletop exercise no less than once during each period of two (2) consecutive federal fiscal years:

1. Development and use of a written scenario based on a hypothetical hazardous substance release; and

2. Development and use of written discussion questions worded specifically to test or evaluate the following provisions of a local plan developed pursuant to KRS 39E.150:

a. Facility contact information;

b. Hazardous chemical inventory;

c. Facility sketch information;

d. Facility response point and directions;

e. Staging area location;

f. Transportation routes;

g. Special facilities;

h. Protective actions;

- i. Emergency equipment;
- j. Emergency training;
- k. Exercise programs;
- l. Spill or release containment;
- m. Spill or release cleanup;
- n. Spill or release disposal;
- o. Emergency notification; and
- p. Vulnerable zone designation.

(d) No later than thirty (30) calendar days following completion of a tabletop exercise, submit to an area manager a written exercise report consisting of the following:

- 1. A completed KyEM Form 201, "Exercise Scenario";
- 2. A set of exercise discussion questions established pursuant to Section 2(2) of this administrative regulation;
- 3. A completed KyEM Form 205, "Exercise Participant Roster"; and

- 4. A completed KyEM Form 206, "Exercise Critique".

(e) No later than thirty (30) calendar days prior to conducting a scheduled functional exercise or full scale exercise, submit to an area manager in final draft form the following:

- 1. A completed KyEM Form 201, "Exercise Scenario"; and
- 2. A completed KyEM Form 202, "Exercise Objectives";

(f) No later than thirty (30) calendar days following functional exercise or full scale exercise completion, submit to a county judge/executive, a mayor, and an area manager a written local exercise report consisting of the following completed forms:

- 1. KyEM Form 201, "Exercise Scenario";
- 2. KyEM Form 202, "Exercise Objectives";
- 3. KyEM Form 203, "Exercise Evaluation Criteria";
- 4. KyEM Form 204, "Master Sequence of Events List";
- 5. KyEM Form 205, "Exercise Participant Roster";
- 6. KyEM Form 206, "Exercise Critique"; and
- 7. KyEM Form 207, "Exercise After Action Report";

(g) Submit corrected, amended, revised, or supplemental exercise material specified and requested by an area manager no later than fifteen (15) calendar days following receipt of a written request.

(2) A local director shall schedule, design, conduct, and document one (1) full-scale exercise no less than once during each period of four (4) consecutive federal fiscal years.

Section 6. Exercise Substitution. (1) In lieu of conducting a scheduled functional exercise in any federal fiscal year, a local director may schedule, design, conduct, and document a full scale exercise no later than June 30 of a federal fiscal year.

(2) In lieu of conducting a scheduled functional exercise or full-scale exercise in a federal fiscal year, a local director may request to substitute the actual response of a local disaster and emergency services organization to a declared emergency in a local jurisdiction during the federal fiscal year.

(3) A local director requesting to substitute a declared emergency for a scheduled functional exercise or full-scale exercise shall:

(a) Submit a written request for local exercise substitution to an area manager no later than thirty (30) calendar days following termination of a declared state of emergency; and

(b) Following receipt of written approval of a request for local exercise substitution, submit a copy of a declaration of emergency order signed by the county judge/executive or mayor and the exercise report material specified in Section 5(1)(f) of this administrative regulation.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Exercise Scenario, October 2000";
- (b) "Exercise Objectives , October 2000";
- (c) "Exercise Evaluation Criteria , October 2000";
- (d) "Master Sequence Of Events List, October 2000";
- (e) "Exercise Participant Roster, October 2000";
- (f) "Exercise Critique, October 2000"; and
- (g) "Exercise After Action Report, October 2000".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a process for exercising a local emergency operations plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapters 39A to 39F requires a local emergency operations plan be exercised.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The standardization of the local exercise process established through this administrative regulation will ensure regular testing and evaluation of a local emergency operations plan consistent with the requirements of KRS Chapters 39A to 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a local exercise process is administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management directors in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to exercise new or updated local plans annually. The exercise process is consultative in nature and requires deliberation and corroboration among groups comprising the local disaster and emergency services organization. The time required to complete the

exercise process will vary depending on the scale of the exercise, but generally will be of limited duration. The resources required to complete the exercise process are within the existing capability of most group entities.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements for exercising a local plan apply equally to all affected regulated entities and are uniformly necessary for the proper and adequate testing and evaluation of a local plan.

FEDERAL MANDATE ANALYSIS

1. Federal statute or regulation constituting the federal mandate: 42 USC 11003(c).

2. State compliance standard: Requires scheduling, preparation, design, conduct, and documentation of a tabletop, functional, or full-scale exercise of a local plan on an annual basis.

3. Minimum or uniform standards contained in the federal mandate: The federal statute requires methods and schedules to be developed for exercising a local plan. Federal guidance published to address the federal exercise requirement identifies a similar scheme of exercises established in this administrative regulation. The concepts, terms, and provisions for exercising a local plan are based on the federal guidance.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Although stated somewhat differently, the state standard is designed to meet the federal standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect: Emergency management.

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

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 (+/-):0

Expenditures(+/-): \$100

Other Explanation: The purpose of this administrative regulation is to establish requirements for exercising a local emergency operations plan. Local government revenues are not increased or decreased and

expenditures may be increased minimally. There will be no increase in the number of employees or other personnel costs for local government. Existing personnel and resources will implement the exercise process requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:230. Local emergency management agency ordinance requirement.

RELATES TO: KRS 39B.010, 39B.990

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39B.010 requires each city, county, urban-county, or charter county government in the Commonwealth to create a local emergency management agency. This administrative regulation establishes the requirements to be met by a governing body of city, county, urban-county, or charter county government to develop and pass a local emergency management agency ordinance.

Section 1. Ordinance Provisions. (1) The governing body of a city, county, urban-county, or charter county government shall pass a local ordinance pertaining to local emergency management agency creation as established in KRS 39B.010.

(2) A local ordinance passed pursuant to subsection (1) of this section shall:

(a) Include the term "emergency management" in the title of the local ordinance; and

(b) Include provisions which specify:

1. The official name of a local emergency management agency created in the local ordinance;

2. The functional and operational organization of a local emergency management agency consistent with KRS 39B.010;

3. The establishment and use of a local emergency management agency budget account consistent with KRS 39B.010(3);

4. The powers and responsibilities of a local emergency management agency;

5. The powers, authorities, rights, and duties of a local emergency management agency director appointed pursuant to KRS 39B.020, including all the powers, duties, rights, and authorities established in KRS 39B.030; and

6. Ordinance enforcement, including the establishment of penalties for violation of the local ordinance.

Section 2. Documentation Requirements. A full copy of a local emergency management agency ordinance, and any amendments, or any agreements, compacts, or other documents associated with the joint creation of a local emergency management agency pursuant to KRS 39B.010(2)(b), shall be submitted by a local director to an area manager for transmittal to the director within thirty (30) calendar days following final passage or adoption by a local governing body.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

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: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a requirement for passage of a local ordinance creating a local emergency management agency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39B.010 requires each city, county, urban-county, or charter county government to create a local emergency management agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The procedural requirements for creating a local emergency management agency established through this administrative regulation will ensure a standardized approach is used by a local governing body to officially create a local emergency management agency as required by KRS 39B.010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a local emergency management agency is legally empowered and organized to properly administer its duties within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 county or urban-county governments and 435 city governments in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to develop and pass a local ordinance creating a local emergency management agency.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are considered very limited. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is \$0.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) **TIERING:** Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. KRS 39B.010 requires each city, county, urban-county, or charter county government to create a local emergency management agency and the requirements to implement the statute as established in this administrative regulation apply equally to all classes of the regulated entity.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): \$100

Other Explanation: The purpose of this administrative regulation is to establish procedural requirements for local governing bodies to create a local emergency management agency. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little initial or other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:240. Local emergency management director appointment process.

RELATES TO: KRS 39B.020

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION AND CONFORMITY: KRS 39B.020 requires a county judge/executive of a county, or a mayor of a city or urban-county government, or a chief executive officer of other local government in the Commonwealth to appoint a local emergency management director. This administrative regulation establishes the process to be followed by a county judge/executive or a mayor to appoint or reappoint a local emergency management director.

Section 1. Definitions. "Candidate" means the individual proposed to be appointed pursuant to KRS 39B.020.

Section 2. Appointment Process. (1) To duly appoint a local emergency management director, a county judge/executive or a mayor shall submit a completed Personnel Cabinet Form P-2, "Application for Employment" on behalf of a candidate to an area manager for transmittal to the director.

(2) Following receipt of written notification from the director confirming the qualifications of a candidate, a county judge/executive or mayor shall:

(a) Complete KyEM Form 15, "Appointment of Local Emergency Management Director";

(b) Attach an applicable written authorization which meets the requirements in KRS 39B.020(3)(d)(1) or (2) or (3) or (4); and

(c) Submit the documents specified in paragraphs (a) and (b) of this subsection to an area manager for transmittal to the director within the time period specified in KRS 39B.020(1).

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(3) To duly reappoint a local director pursuant to KRS 39B.020(3), a county judge/executive or a mayor shall execute the actions established in subsection (2) of this section.

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

(a) "Application for Employment, June 16, 1999"; and

(b) "Appointment of Local Emergency Management Director, September 2000".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be met by a county judge/executive or mayor when appointing a local director.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39B.020 requires a county judge/executive or mayor to appoint a local director.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The procedural requirements for appointing a local emergency management director established through this administrative regulation will ensure a standardized approach is used by a local chief executive officer to duly appoint a local director as required by KRS 39B.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a local emergency management director is legally appointed and empowered to properly administer the local program within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 county judge/executives and 435 mayors in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to complete and submit appointment papers associated with the appointment or reappointment of a local director for a city, county, urban-county, or charter county government.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are considered very limited. Estimated cost is less than \$0.

(b) On a continuing basis: Estimated cost is \$0.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. KRS 39B.020 requires each county judge/executive or mayor to appoint a local emergency management director and the requirements to implement the statute as established in this administrative regulation apply equally to all classes of the regulated entity.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish the procedural requirements for the appointment of a local director. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

**GENERAL GOVERNMENT
Department for Military Affairs
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:250. Workers' Compensation Enrollment Form.

RELATES TO: KRS 39C.110(4), 39F.170(6)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39C.110(4) and 39F.170(6) authorizes workers' compensation coverage for local personnel. This administrative regulation establishes the procedure to be followed by local personnel to enroll for workers' compensation coverage paid by the division.

Section 1. Definition. "Local personnel" means the personnel specified in KRS 39C.110 and 39F.170.

Section 2. Enrollment Procedure. To enroll for workers' compensation coverage, local personnel shall:

- (1) Complete KyEM Form 50; and
- (2) Submit a completed KyEM Form 50 to an area manager.

Section 3. Incorporation by Reference. (1) "Workers' Compensation Enrollment Form, September 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to be followed by local personnel to enroll for workers' compensation coverage.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39C.110(4) and 39F.170(6) requires local personnel to complete an enrollment form for workers' compensation coverage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The procedural requirements for local personnel to enroll for workers' compensation as established in this administrative regulation will assure a standardized enrollment method is

used to meet the intent of the statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure local personnel are properly enrolled for workers' compensation coverage within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapter 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management agencies and 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to complete and submit a workers' compensation enrollment form as a condition for eligibility to receive workers' compensation benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are considered very limited. Estimated cost is less than \$0.

(b) On a continuing basis: Estimated cost is \$0.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. KRS 39C.110(4) and 39F.170(6) require local personnel to complete an enrollment form for workers' compensation coverage and the requirements established in this administrative regulation apply equally to all classes of the regulated entity.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): 0

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Other Explanation: The purpose of this administrative regulation is to establish procedural requirements for local personnel to enroll in workers' compensation coverage. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

**GENERAL GOVERNMENT CABINET
Department of Military Affairs
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:260. Supplementary state fund expense reimbursement eligibility list.

RELATES TO: KRS 39C.050(9)(a), (b)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39C.050(9)(a) requires the division to promulgate an administrative regulation specifying officials who may be reimbursed for expenses associated with attendance at emergency management training. This administrative regulation establishes the list of officials eligible to receive expense reimbursement through the supplementary state fund established in KRS 39C.010 and 39C.020.

Section 1. Definitions. "Emergency management training" means any seminar, workshop, course, class, or instruction conducted, sponsored, specified, offered through, or approved by the division.

Section 2. Eligible Officials. In addition to those officials specified in KRS 39C.050(8), the following officials, or their designee, may have the expenses specified in KRS 39C.050(9)(b)(1) or (2) reimbursed through the supplementary state fund for attendance at emergency management training, if funds are available:

- (1) A local emergency management agency secretary;
- (2) A chief of a local fire department;
- (3) A chief of a local law enforcement agency;
- (4) A director of a local ambulance service;
- (5) A director of a local emergency medical services;
- (6) A local public works director;
- (7) A local emergency management agency operations officer;
- (8) A local emergency management agency communications officer;
- (9) A local emergency management agency public information officer;
- (10) A local emergency management agency hazard mitigation officer;
- (11) A chief of a local rescue squad;
- (12) A local search and rescue coordinator;
- (13) A local twenty-four (24) hour warning point supervisor;
- (14) A local public safety officer; and
- (15) A chairman of a local emergency planning committee.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a list of eligible officials who may be reimbursed expenses through the supplementary state fund for emergency management training.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39C.050(9)(a) requires the division to promulgate an administrative regulation establishing a list of officials eligible for emergency management training expense reimbursement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a list of officials as required by KRS 39C.050(9)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a legal standard is used to determine personnel who may be reimbursed emergency management training expenses through the state supplementary fund.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an undetermined number of local elected or appointed officials in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be eligible for emergency management training expense reimbursement through the state supplementary fund, if funds are available.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are considered very limited. Estimated cost is less than \$0.

(b) On a continuing basis: Estimated cost is \$0.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The benefits or requirements of this administrative regulation apply equally to all classes of the regulated entity.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish a list of officials eligible to receive expense reimbursement through the supplementary state fund. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department of Military Affairs Division of Emergency Management (Repealer)

106 KAR 1:270. Repeal of 106 KAR 1:075.

RELATES TO: KRS 39.050

STATUTORY AUTHORITY: KRS 39A.010(4)

NECESSITY, FUNCTION AND CONFORMITY: 106 KAR 1:075 is not adequate because KRS Chapter 39C establishes new requirements for local emergency management agencies.

Section 1. 106 KAR 1:075, Local disaster and emergency services organizational standards, is hereby repealed.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 106 KAR 1:075 which is no longer effective.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the statutory authority for 106 KAR 1:075 was repealed under HB 453 enacted in 1998.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation ensures the repeal of an ineffective administrative regulation which is no longer consistent with the requirements of KRS Chapters 39A to 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure emergency management funding is administered under current administrative regulations within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local emergency management agencies and local directors in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will no longer be required to comply with the requirements of 106 KAR 1:075.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements eliminated by the repeal of 106 KAR 1: 075 apply equally to all affected regulated entities.

FISCAL NOTE ON LOCAL GOVERNMENT

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

ernment? Yes

2. State what unit, part or division of local government this administrative regulation will affect: Emergency management.

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

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 (+/-):\$0

Expenditures(+/-):\$0

Other Explanation: The purpose of this administrative regulation is to repeal 106 KAR 1:075 which is no longer effective. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

**GENERAL GOVERNMENT
Department of Military Affairs
Division of Emergency Management
(Repealer)**

106 KAR 1:280. Repeal of 106 KAR 1:060.

RELATES TO: KRS Chapter 39F

STATUTORY AUTHORITY: KRS 39A.010(4)

NECESSITY, FUNCTION, AND CONFORMITY: 106 KAR 1:060 is not adequate because KRS Chapter 39F establishes new requirements for local and state rescue programs.

Section 1. 106 KAR 1:060, Rescue squad administrative regulations, is hereby repealed.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals existing administrative regulation 106 KAR 1:060.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the statutory authority for 106 KAR 1:060 was repealed under Section 113 of HB 453 enacted in

1998.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation ensures the repeal of an ineffective administrative regulation, which is no longer consistent with the requirements of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the search and rescue program is administered under a proper procedures within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will no longer be required to comply with the requirements of 106 KAR 1:060.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements eliminated by the repeal of 106 KAR 1:060 apply equally to all affected regulated entities.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to repeal an existing administrative regulation pertaining to rescue programs which is no longer effective. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

**GENERAL GOVERNMENT
Department of Military
Division of Emergency Management
(New Administrative Regulation)**

106 KAR 1:290. Specialized rescue squad alternative affiliation agreement process.

RELATES TO: KRS 39F.030

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.030(1) authorizes a rescue squad which proposes to provide regional or statewide specialized rescue services to apply to the director for an alternative affiliation agreement and alternative vehicle and equipment requirements. This administrative regulation establishes the process for submitting a request to the director.

Section 1. Definitions. "Chief rescue officer" means the chief executive officer of a rescue squad.

Section 2. Alternative Request. (1) A chief rescue officer shall submit a written request for alternative affiliation and alternative vehicle and equipment requirements, including all supporting documentation, to a local search and rescue coordinator in a county where a rescue squad is headquartered; and

(2) A request shall include a geographical service area as either statewide or regional. Regional service areas shall list each county in a region.

Section 3. A local search and rescue coordinator shall review a request and all supporting documentation and make a written recommendation to a local director within thirty (30) days of receipt.

Section 4. A local director shall review a request and all supporting documentation and make a written recommendation to an area manager within thirty (30) days of receipt.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency

Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a process for requesting a rescue squad alternative affiliation agreement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires a rescue squad apply to the director of the division for authorization to provide specialized rescue services through issuance of an alternative affiliation agreement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The process specified for issuance of an alternative affiliation agreement through this administrative regulation ensures specialized rescue services are authorized consistent with the intent of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the process for authorizing specialized rescue services through an alternative affiliation agreement is administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to submit a written request to the director when seeking an alternative affiliation agreement.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regula-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

tion. The requirements of this administrative regulation specify a process for requesting an alternative affiliation agreement, which applies equally to all rescue squads.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish requirements for requesting an alternate affiliation agreement by local rescue squads. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:300. Search and Rescue Mission Notification and Report Form.

RELATES TO: KRS 39F.180

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.180(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.180 requires notification and reporting of missing, lost, or overdue persons. KRS 39F.180(6) requires the division to promulgate administrative regulations governing search and rescue notification and reporting requirements. This administrative regulation establishes the search and rescue mission notification and report form.

Section 1. Form Completion, Part 1. An agency, organization or person required by KRS 39F.180 to file a report shall submit a completed KyEM Form 400 Part 1, "Search and Rescue Mission Notification and Report".

Section 2. Form Completion, Part 2. A local search and rescue coordinator shall submit a completed KyEM Form 400 Part 2, "Search and Rescue Mission Notification and Report".

Section 3. Incorporation by Reference. (1) "Search and Rescue Mission Notification and Report, July 2000" is incorporated by reference.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management,

State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a search and rescue mission notification and report form and the instructions for completion of the form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires notification and reporting of search and rescue incidents to state and local officials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The creation of the search and rescue notification and reporting process established through this administrative regulation will ensure search and rescue mission information is collected and disseminated consistent with the requirements of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure a search and rescue mission notification and reporting process is administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 search and rescue coordinators and an undetermined number of public safety agencies and dispatch centers in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to complete a search and rescue mission notification and report form and disseminate the information to local and state officials. The resources required to complete the notification and reporting process are within the existing capability of most groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements for providing search and rescue mission notification and reporting apply equally to all affected regulated entities and are uniformly necessary for the proper and adequate process of notification and reporting specified by the statutes.

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: Emergency management, dispatch/communications centers, and rescue services.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish requirements for notification and reporting of lost, missing, or overdue persons. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental and emergency response personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:310. Search and Rescue Quarterly Training Report Form.

RELATES TO: KRS 39F.120(8)(b), 39F.150(3)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.150(3) requires a rescue squad receiving state assistance through the division to submit a quarterly training report. This administrative regulation establishes the training report form and instructions.

Section 1. Form Completion. (1) The KyEM Form 410, "Search and Rescue Quarterly Training Report" shall be:

(a) Fully completed; and

(b) Signed, in ink, by a chief rescue officer.

(2) Submitted not later than July 10, October 10, January 10 and April 10 of each state fiscal year.

Section 2. Incorporation by Reference. (1) "Search and Rescue Quarterly Training Report, July 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a search and rescue quarterly training report form and instructions for completion of the form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires a rescue squad to report quarterly training activity to state and local officials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The creation of a search and rescue quarterly training reporting process established through this administrative regulation will ensure search and rescue training information is collected and disseminated quarterly consistent with the requirements of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the search and rescue quarterly training reporting process is administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organiza-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

tions, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to complete a search and rescue quarterly training report form and disseminate the information to local and state officials. The resources required to complete the reporting process are within the existing capability of most groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements for providing a search and rescue quarterly training report apply equally to all affected regulated entities and are uniformly necessary for the proper and adequate process of reporting specified by the statutes.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish requirements for reporting of training activity of local rescue squads. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:320. Search and Rescue Quarterly Incident Report Form.

RELATES TO: KRS 39F.120(8)(b), 39F.150(3)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.150(3) requires a rescue squad receiving state assistance through the division to submit a quarterly incident report. This administrative regulation establishes the incident report form and instructions.

Section 1. Form Completion. (1) The KyEM Form 420, "Search and Rescue Quarterly Incident Report" shall be:

(a) Fully completed; and

(b) Signed, in ink, by a chief rescue officer.

(2) Submitted no later than July 10, October 10, January 10 and April 10 of each state fiscal year.

Section 2. Incorporation by Reference. (1) "Search and Rescue Quarterly Incident Report, July 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a search and rescue quarterly incident report form and instructions for completion of the form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires a rescue squad to report quarterly incident activity to state and local officials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The creation of a search and rescue quarterly incident reporting process established through this administrative regulation will ensure search and rescue incident information is collected and disseminated quarterly consistent with the requirements of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the search and rescue quarterly incident reporting process is administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative

regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to complete a search and rescue quarterly incident report form and disseminate the information to local and state officials. The resources required to complete the reporting process are within the existing capability of most groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements for providing a search and rescue quarterly incident report apply equally to all affected regulated entities and are uniformly necessary for the proper and adequate process of reporting specified by the statutes.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish requirements for reporting of incident response activity of local rescue squads. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:330. Search and Rescue Squad Quarterly Active Membership List Form.

RELATES TO: KRS 39F.120(5)(6)(7)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION AND CONFORMITY: KRS 39F.120(6) requires a rescue squad receiving state assistance through the division to submit a quarterly active membership list. This administrative regulation establishes the search and rescue squad quarterly active membership list form and instructions.

Section 1. Form Completion. (1) The KyEM Form 430, "Search and Rescue Squad Quarterly Active Membership List" shall be:

(a) Fully completed; and

(b) Signed in ink, by a chief rescue officer.

(2) Submitted no later than July 10, October 10, January 10 and April 10 of each state fiscal year.

Section 2. Incorporation by Reference. (1) "Search and Rescue Squad Quarterly Active Membership List, July 2000" is incorporated by reference.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a search and rescue quarterly active membership report form and instructions for completion of the form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires a rescue squad to report quarterly active membership information to state and local officials.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The creation of a search and rescue quarterly

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

active membership reporting process established through this administrative regulation will ensure search and rescue active membership information is collected and disseminated quarterly consistent with the requirements of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the search and rescue quarterly active membership reporting process is administered within the context of a state-wide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to complete a search and rescue quarterly active membership report form and disseminate the information to local and state officials. The resources required to complete the reporting process are within the existing capability of most groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements for providing a search and rescue quarterly active membership report apply equally to all affected regulated entities and are uniformly necessary for the proper and adequate process of reporting specified by the statutes.

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: Emergency management.

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

4. Estimate the effect of this administrative regulation on the ex-

penditures 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish requirements for reporting of membership rosters of local rescue squads. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:340. Rescue Aid Fund allocation.

RELATES TO: KRS 39F.020(5), 39F.100(2), 39F.110

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.020(5) requires the division to administer funds to local rescue squads. This administrative regulation establishes the allocation of rescue aid funds.

Section 1. Definitions. "Fund" means the rescue aid fund established in KRS 39F.100(2).

Section 2. Fund Allocation. The fund shall be allocated as follows:

(1) Fifteen (15) percent of the total fund appropriated in a state fiscal year shall be allocated for administration and training;

(2) Fifty (50) percent of the total fund appropriated in a state fiscal year shall be allocated for minimum equipment established in 106 KAR 1:350; and

(3) Thirty-five (35) percent of the total fund appropriated in a state fiscal year shall be allocated for optional equipment.

Section 3. A rescue squad shall be allocated funds for not more than one (1) rescue aid application in a state fiscal year.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

FISCAL NOTE ON LOCAL GOVERNMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the allocation of rescue aid funds established in KRS 39F.100.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires rescue aid funds to be administered by the division in accordance with administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The allocation of rescue aid funds through this administrative regulation ensures funds are provided for rescue equipment and training consistent with the intent of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure rescue aid funds are administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will become better equipped and trained to perform their search and rescue mission.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements of this administrative regulation specify an allocation scheme for rescue aid funds for which all rescue squads can equally apply. The percentages of funds designated in this administrative regulation are uniformly applicable to all rescue squads requesting rescue aid funds.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish an allocation of funds associated with the rescue aid fund. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT

Department of Military Affairs

Division of Emergency Management

(New Administrative Regulation)

106 KAR 1:350. Rescue squad minimum equipment.

RELATES TO: KRS 39F.040(5), 39F.050(3)(d), 39F.070(3)(d), 39F.120(12)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.120(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.120(12) requires a rescue squad to have the minimum equipment necessary to perform a mission. KRS 39F.120(12) requires the division to promulgate an administrative regulation establishing minimum equipment for a rescue squad. This administrative regulation establishes the minimum equipment requirements for a rescue squad.

Section 1. Definitions. (1) "Fund" means the rescue aid fund established in KRS 39F.100(2).

(2) "New or replacement equipment" means equipment that a rescue squad is not required to have prior to becoming eligible to participate in the fund.

(3) "Replacement only equipment" means equipment that a rescue squad shall have in its possession before becoming eligible to participate in the fund.

Section 2. The minimum new or replacement equipment for a general rescue squad shall be:

- (1) Twelve (12) pairs of gloves;
- (2) Twelve (12) pairs of safety goggles;
- (3) Twelve (12) squad coats;
- (4) Twelve (12) helmets;
- (5) Twelve (12) pairs of boots with protective toe;
- (6) Two (2) self-contained breathing apparatus (SCBA), thirty (30) minute capacity, with spare tank (NIOSH approved);
- (7) Two (2) first aid kits, twenty-four (24) unit industrial type or equivalent;
- (8) Two (2) full backboards;
- (9) Two (2) half backboards;
- (10) One (1) Stokes litter;
- (11) Four (4) sections of fifteen (15) foot by one (1) inch tubular nylon webbing;
- (12) One (1) splint kit, with half-arm, half-leg, full-arm, full leg;
- (13) One (1) twelve (12) foot tow chain;
- (14) Two (2) hacksaw frames;
- (15) Twelve (12) hacksaw blades;
- (16) Two (2) pairs of pliers, eight (8) inch, slip-joint;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

- (17) One (1) pair of vice grips;
- (18) Two (2) pairs wire cutters with insulated grips;
- (19) One (1) center punch;
- (20) Four (4) screwdrivers, flat blade, assorted sizes;
- (21) Four (4) Phillips screwdrivers, assorted sizes;
- (22) One (1) seat belt cutter;
- (23) One (1) pair of eight (8) inch tin snips;
- (24) One (1) claw hammer;
- (25) Two (2) crescent wrenches;
- (26) Two (2) twenty-four (24) inch pipe wrenches;
- (27) One (1) flat head axe;
- (28) Two (2) axes, single butt, four (4) pound head;
- (29) One (1) mattock;
- (30) One (1) eighteen (18) inch bow saw;
- (31) One (1) pair of thirty-six (36) inch bolt cutters;
- (32) One (1) eight (8) pound sledge hammer;
- (33) Two (2) bale hooks;
- (34) One (1) fourteen (14) inch chain saw;
- (35) One (1) rounded point shovel, (short handle);
- (36) One (1) rounded point shovel, (long handle);
- (37) Two (2) one half (1/2) inch by twelve (12) inch gooseneck wrecking bars;
- (38) Two (2) one (1) inch by thirty (30) inch gooseneck wrecking bars;
- (39) One (1) six (6) foot pry bar;
- (40) One (1) one and one-half (1 1/2) ton come-along;
- (41) One (1) air chisel with extra tank;
- (42) One (1) ten (10) ton porta-power;
- (43) One (1) five (5) ton hydraulic jack;
- (44) One (1) thirty-six (36) inch, hooligan tool;
- (45) Two (2) four (4) inch rescue pulleys;
- (46) Four (4) fifty (50) foot sections of nylon rope;
- (47) Two (2) one hundred fifty (150) foot by one-half (1/2) inch static kernmantle rope;
- (48) One (1) eight (8) foot straight ladder;
- (49) Two (2) fire retardant blankets or salvage covers;
- (50) Two (2) five (5) gallon gas cans, safety type;
- (51) Two (2) ten (10) pound fire extinguishers, ABC rated;
- (52) One (1) two-point-five (2.5) KVA portable generator;
- (53) One (1) fifty (50) foot section of No. 10 electrical extension cord;
- (54) One (1) one hundred (100) foot section of No. 10 electrical extension cord;
- (55) One (1) one hundred (100) foot section of No. 12 electrical extension cord;
- (56) Twelve (12) pagers;
- (57) Four (4) portable (hand-held) radios;
- (58) One (1) mobile radio per vehicle;
- (59) One (1) mobile radio antenna per vehicle;
- (60) One (1) encoder;
- (61) One (1) base station radio with antenna; and
- (62) One (1) base station radio tower.

Section 3. The minimum equipment for a rescue squad specializing in water rescue and recovery operations not utilizing divers shall be:

- (1) New or replacement equipment:
 - (a) One (1) Jon boat, in excess of nineteen (19) feet;
 - (b) One (1) twenty-five (25) horse power boat motor;
 - (c) Two (2) marine type gas tanks;
 - (d) One (1) boat anchor;
 - (e) One (1) chart graph with print-out capability;
 - (f) Four (4) Type III personal flotation devices approved by the United States Coast Guard;
 - (g) Two (2) lanterns with rechargeable batteries;
 - (h) Four (4) buoy markers;
 - (i) Two (2) spot lights, boat mounted;
 - (j) One (1) tool box;
 - (k) One (1) flat blade screwdriver;
 - (l) One (1) Phillips head screwdriver;
 - (m) One (1) pair of channel lock pliers;
 - (n) One (1) pair of vice grips;
 - (o) One (1) hatchet;

- (p) One (1) pair of eighteen (18) inch bolt cutters;
- (q) One (1) eighteen (18) inch bow saw;
- (r) Two (2) pairs of waders;
- (s) Four (4) pairs of rubberized gloves;
- (t) Two (2) grappling irons;
- (u) One (1) body bag;
- (v) One (1) shepherd's hook;
- (w) One (1) grapnel;
- (x) Two (2) pike poles;
- (y) Two (2) sections of 250 feet by one-half (1/2) inch nylon or polypropylene rope;
- (z) Two (2) water throw bags with a minimum of fifty (50) feet of nylon rope for each bag;
 - (aa) Two (2) 250 foot line bags;
 - (bb) Two (2) Anderson or equivalent rescue pulleys;
 - (cc) One (1) full length backboard;
 - (dd) One (1) first aid kit;
 - (ee) One (1) Stokes basket stretcher or equivalent;
 - (ff) Two (2) signal lights; and
 - (gg) Two (2) flash lights.
- (2) Replacement equipment only:
 - (a) One (1) vehicle dedicated to water rescue and recovery;
 - (b) One (1) Jon boat, sixteen (16) foot or larger;
 - (c) One (1) boat motor with a minimum capacity of fifteen (15) horse power;
 - (d) One (1) boat trailer; and
 - (e) Two (2) boat oars.

Section 4. The minimum equipment for a rescue squad specializing in water rescue and recovery operations utilizing divers shall be:

- (1) New or replacement equipment:
 - (a) One (1) mask per certified diver;
 - (b) One (1) pressure gauge per certified diver;
 - (c) One (1) knife per certified diver;
 - (d) One (1) wet suit per certified diver;
 - (e) One (1) snorkel per certified diver;
 - (f) One (1) buoyancy compensator per certified diver;
 - (g) One (1) weight belt per certified diver;
 - (h) One (1) depth gauge per certified diver;
 - (i) One (1) waterproof flashlight per certified diver;
 - (j) One (1) pair of fins per certified diver;
 - (k) One (1) air tank per certified diver; and
 - (l) One (1) regulator per certified diver.
- (2) Replacement equipment only:
 - (a) The water rescue and recovery equipment established in Section 3 of this administrative regulation;
 - (b) Two (2) extra tanks per certified diver;
 - (c) One (1) dry suit per certified diver;
 - (d) Three (3) dive flags; and
 - (e) One (1) underwater radio communications equipment.

Section 5. The minimum equipment for a rescue squad specializing in high angle or cave rescue shall be:

- (1) New or replacement equipment:
 - (a) Four (4) rappelling helmets UIAA approved;
 - (b) Twelve (12) fifteen (15) feet by one (1) inch nylon webbing;
 - (c) Four (4) pairs of rappelling gloves;
 - (d) Four (4) helmet head lamps;
 - (e) Four (4) rappelling, climbing seat, or full body harnesses;
 - (f) Twelve (12) light sticks, cyalume or equivalent;
 - (g) Four (4) rugged waterproof flashlights with extra batteries and bulbs;
 - (h) Six (6) 200 feet by one-half (1/2) inch hauling ropes;
 - (i) Two (2) 300 feet by one-half (1/2) inch static kernmantle rope;
 - (j) Two (2) 200 feet by seven-sixteenths (7/16) inch static kernmantle rope;
 - (k) Two (2) 300 feet by seven-sixteenths (7/16) inch static kernmantle rope;
 - (l) Eight (8) rope bags;
 - (m) Four (4) two (2) inch rescue pulleys;
 - (n) Four (4) brake bar rappel racks, six (6) PMI, SMC or equivalent bar type;
 - (o) Ten (10) large "D" locking carabiners;

- (p) Ten (10) large "D" offset locking carabiners;
- (q) Eight (8) Gibbs ascenders or equivalent;
- (r) Four (4) figure eight descenders;
- (s) One (1) SKED stretcher or equivalent;
- (t) Two (2) waterproofed belt pack first aid kits that include:
 - 1. Pencil;
 - 2. Paper;
 - 3. Ziplock bags;
 - 4. Latex examination gloves;
 - 5. Assorted sizes of nasopharyngeal airways;
 - 6. Suction syringe with catheters;
 - 7. Large safety pins;
 - 8. Elastic bandages two (2) inches to four (4) inches;
 - 9. Four (4) inch by six (6) inch stretch roller gauze bandages;
 - 10. Antiseptic solution;
 - 11. Thick and absorbent trauma dressing pad;
 - 12. Four (4) inch by four (4) inch gauge pads;
 - 13. Waterproof tape;
 - 14. Wire ladder splints;
 - 15. SAM splints or a similar type; and
 - 16. Large garbage bags.
- (u) One (1) splint kit containing:
 - 1. Half-arm splint;
 - 2. Half-leg splint;
 - 3. Full-arm splint; and
 - 4. Full-leg splint.
- (v) One (1) long spine board;
- (w) One (1) set assorted sizes of rigid or semi-rigid cervical collars;
- (x) One (1) Kendrick Extrication Device or Oregon spine splint or equivalent; and
- (y) Two (2) wool blankets, or one (1) exposure bag, or one (1) synthetic sleeping bag.
- (2) Replacement equipment only:
 - (a) One (1) vehicle dedicated to high angle or cave rescue;
 - (b) One (1) Stokes litter or equivalent;
 - (c) One (1) 200 foot length of seven sixteenths (7/16) inch static kernmantle rope;
 - (d) Four (4) large "D" locking carabiners;
 - (e) One (1) figure eight descender; and
 - (f) Four (4) fifteen (15) feet by one (1) inch nylon webbing.

Section 6. The minimum equipment for each member of a search dog rescue squad specializing in a search for lost, trapped or missing persons shall be:

- (1) New or replacement equipment:
 - (a) One (1) pair of rain gear, jacket and pants;
 - (b) One (1) rescue vest;
 - (c) One (1) pair of gloves;
 - (d) One (1) pair of boots;
 - (e) One (1) fanny pack or equivalent;
 - (f) One (1) rescue helmet with headlamp;
 - (g) One (1) tracking or walking stick;
 - (h) One (1) canteen with belt;
 - (i) One (1) flashlight with extra batteries;
 - (j) One (1) compass;
 - (k) One (1) Stokes litter or equivalent;
 - (l) One (1) portable generator with lights;
 - (m) One (1) pager;
 - (n) One (1) portable radio; and
 - (o) One (1) mobile radio.
- (2) Replacement equipment only: none.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing

by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a minimum equipment list for rescue squads as required in KRS Chapter 39F.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39F.120 requires a minimum equipment list for rescue squads be established by administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The minimum equipment list established through this administrative regulation ensures basic search and rescue tools are identified are consistent with the intent of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure basic search and rescue equipment resources are identified and developed within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will become better equipped and trained to perform their search and rescue mission.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? Yes. The Division of Emergency Management has applied tiering within this administrative regulation. The minimum equipment requirements are not the same for all classes of the affected regulated entity. The minimum equipment list is tiered to meet the basic equipment needs of general purpose rescue squads and the basic equipment needs of specialized rescue squads operating in the Commonwealth.

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: Emergency management

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish minimum equipment requirements for rescue squads. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:360. Rescue Aid Fund application.

RELATES TO: KRS 39F.020(5), 39F.100(2), 39F.110, 39F.130, 39F.140

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5), 39F.150(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.020(5) requires the division to administer funds to local rescue squads. This administrative regulation establishes the application form and procedures for requesting rescue aid funds.

Section 1. Definitions. (1) "Application" means a KyEM Form 460, "Rescue Aid Fund Project Application".

(2) "Chief rescue officer" means the chief executive officer of a rescue squad.

(3) "End-of-year funds" means rescue aid funds not encumbered or expended by a rescue squad and returned to the division prior to April 1 of a state fiscal year.

(4) "Minimum equipment" means the equipment required by KRS 39F.120(12) and 106 KAR 1:350.

(5) "Optional equipment" means equipment not listed as minimum equipment in 106 KAR 1:350, but is necessary for the performance of a rescue squad's mission.

Section 2. Application Procedure. An application shall:

(1) Be completed according to the instructions on an application

form;

(2) Not request funding for any single item or group of like items costing less than \$100;

(3) Be submitted in original form with original signatures only; and

(4) Include a bid quote from a company or sales representative for each item costing more than \$5,000 which:

(a) Identifies the cost of an item;

(b) Specifies a delivery schedule for an item; and

(c) Specifies provisions for maintenance of an item.

Section 3. Request for Minimum Equipment Funds. (1) A chief rescue officer requesting funds to purchase new or replacement minimum equipment shall submit a completed application as specified in KRS 39F.130(1) no later than July 1 of a calendar year.

(2) A local director shall forward a completed application as specified in KRS 39F.130(2) no later than July 15 of a state fiscal year.

Section 4. Request for Optional Equipment Funds. (1) A chief rescue officer requesting funds to purchase new or replacement optional equipment shall submit a completed application as specified in KRS 39F.130(1) no later than November 1 of a state fiscal year.

(2) A local director shall forward a completed application as specified in KRS 39F.130(2) no later than November 15 of a state fiscal year.

Section 5. Request for End-of-year Funds. (1) A chief rescue officer requesting end-of-year funds for minimum or optional equipment shall submit a completed application as specified in KRS 39F.130(1) no later than February 1 of a state fiscal year.

(2) A local director shall forward a completed application as specified in KRS 39F.130(2) no later than March 1 of a state fiscal year.

Section 6. Incorporation by Reference. (1) "Rescue Aid Fund Project Application, July 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application form and instructions to be used

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

by rescue squads requesting state rescue aid funds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires rescue aid funds to be administered by the Division in accordance with administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The allocation of rescue aid funds through this administrative regulation ensures funds are provided to rescue squads consistent with the intent of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure rescue aid funds are administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will become better equipped to perform their search and rescue mission.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements of this administrative regulation specify an application process for rescue aid funds, which apply equally to all rescue squads. The general application procedures specified in this administrative regulation are uniformly applicable to all rescue squads in the Commonwealth.

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: Emergency management.

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

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish an application form for the rescue aid fund. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department for Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:370. Rescue aid fund expenditure documentation.

RELATES TO: KRS 39F.140(1)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.140(1) requires a rescue squad to document expenditure of rescue aid funds. This administrative regulation establishes a procedure for documenting expenditure of rescue aid funds by a rescue squad.

Section 1. To document expenditure of rescue aid funds, a rescue squad shall submit the documentation specified in KRS 39F.140(1) to a local director.

Section 2. A local director, within ten (10) working days of receipt of the materials specified in Section 1 of this administrative regulation, shall submit to an area manager:

(1) A completed KyEM Form 160, "Local Emergency Management Assistance Claim Form" incorporated by reference in KAR 1:160; and

(2) The documentation received from a rescue squad pursuant to Section 1 of this administrative regulation.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a procedure for documenting expenditure of rescue aid funds by a local rescue squad.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires a rescue squad to document expenditure of rescue aid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The creation of a procedure for documenting expenditure of rescue aid funds through this administrative regulation will ensure documentation is provided to the division in a systematic manner and supports the requirements of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the procedure for documenting the expenditure of rescue aid funds is administered within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads and 120 local directors in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be required to complete a form to document the expenditure of rescue aid funds and submit the form, with supporting materials, to a local director for transmittal to an area manager. The resources required to complete the documentation process are within the existing capability of most groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$0.

(b) On a continuing basis: Estimated cost is less than \$0.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirements for providing documentation of rescue aid fund expenditures apply equally to all affected regulated entities and are uniformly necessary for the proper and adequate process of docu-

menting rescue aid fund expenditures specified by the statutes.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish a procedure for documenting expenditure of rescue aid funds by a local rescue squad. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1:380. Rescue Squad Cumulative Equipment Inventory Form.

RELATES TO: KRS 39F.150(2)

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.150(3) requires a local director to maintain a cumulative list of equipment owned by a local rescue squad. This administrative regulation establishes the rescue squad cumulative equipment inventory form and instructions.

Section 1. Form Completion. The KyEM Form 465, "Rescue Squad Cumulative Equipment Inventory" shall be:

(1) Fully completed; and

(2) Signed, in ink, by a local director.

Section 2. Incorporation by Reference. (1) "Rescue Squad Cumulative Equipment Inventory, July 2000" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportu-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

nity 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: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a rescue squad cumulative equipment inventory form and instructions for completion of the form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 39F.150(2) requires a local director to maintain a cumulative list of equipment possessed by a rescue squad.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cumulative equipment inventory form established through this administrative regulation ensures a listing of rescue squad equipment items are identified and accounted for consistent with the intent of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all search and rescue equipment resources are catalogued and any deficiencies identified which may be corrected through the rescue aid fund. The inventory will also provide a record of equipment available for assignment within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 120 local directors in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above group will be required to complete a physical inventory of equipment owned by a local rescue squad and attach the inventory to a rescue aid application each time a rescue squad applies for rescue aid funds.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. The Division of Emergency Management has not applied tiering within this administrative regulation. The requirement to maintain a rescue squad equipment inventory applies equally for all classes of the affected regulated entity.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish a cumulative equipment inventory form for rescue squad equipment. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

GENERAL GOVERNMENT Department of Military Affairs Division of Emergency Management (New Administrative Regulation)

106 KAR 1: 390. Search and rescue training requirements.

RELATES TO: KRS 39F.040(3), 39F.050(3)(c), 39F.070(3)(c), 39F.120(8), 39F.200, 39F.210

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.200, 39F.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.200 and 39F.210 authorize the division to establish minimum training requirements for persons engaged in search and rescue activities. This administrative regulation establishes minimum training requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator.

Section 1. Definitions. "Successfully complete" means to attend or participate in search and rescue training and acquire and submit to a local director a copy of an instructor-provided training completion certificate or record.

Section 2. Minimum training requirements for a local search and rescue coordinator, a state-certified search dog handler, or a search and rescue incident commander shall be to successfully complete:

(1) A twenty-one (21) hour division offered or approved search and rescue course or equivalent;

(2) A thirty-two (32) hour division offered or approved search management course; and

(3) A search incident command or incident management system (IMS) course which includes units on command and general staff duties, the eight (8) component elements of an incident command system, local and state search and rescue plans and procedures and

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

practical exercises.

Section 3. Minimum training requirements for a rescue squad member specializing in high angle or cave rescue shall be to successfully complete the following:

- (1) The National Cave Rescue Commission (NCRC) offered and approved Cave Rescue Orientation Course; and
- (2) A National Cave Rescue Commission-approved Cave Operations and Management Seminar for squad members who manage response to cave rescues.

Section 4. Minimum training requirements for a search dog evaluator shall be to successfully complete the following:

- (1) The requirements established in Section 2 of this administrative regulation; and
- (2) A search dog training curriculum developed and administered by the individual organization specializing in search dog training to include as a minimum:
 - (a) Obedience;
 - (b) Agility; and
 - (c) Scenting capability.

Section 5. Minimum training requirements for a rescue squad member specializing in dive rescue and recovery shall be:

- (1) Certification in open water by one (1) of the following nationally recognized organizations or equivalents:
 - (a) International Diving Educators Association (IDEA);
 - (b) Multinational Diving Educators Association (MDEA);
 - (c) National Association of Underwater Instructors (NAUI);
 - (d) National Association of SCUBA Diving Schools (NASDS);
 - (e) National Association of SCUBA Instructors (NASI);
 - (f) Professional Association of Diving Instructors (PADI);
 - (g) Professional Diving Instructors Corporation (PDIC);
 - (h) SCUBA Schools International (SSI);
 - (i) United States Navy (USN); or
 - (j) YMCA National SCUBA Program (YMCA).
- (2) Annually, a minimum of ten (10) hours underwater training in rescue diving techniques developed and administered by the individual organization specializing in water rescue utilizing divers.
- (3) Annual compliance with medical standards established by The National Association for Search and Rescue Guidelines for Public Safety Diving and Operation of Public Safety Diving Programs.

Section 6. A rescue squad member specializing in urban search and rescue shall meet standards developed by the Federal Emergency Management Agency, Urban Search and Rescue Program.

Section 7. Incorporation by Reference. (1) "The National Association for Search and Rescue Guidelines for Public Safety Diving and Operation of Public Safety Diving Programs, Second Edition, November 1989" is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of the Director, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601.

W. R. PADGETT, Director

JOHN R. GROVES, JR., Major General, KyNG

APPROVED BY AGENCY: December 4, 2000

FILED WITH LRC: December 7, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 2001, at 1 p.m. (Eastern Time), in the EOC Conference Room, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 2001, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request

for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lucille Orlando, Administrative Branch Manager, Division of Emergency Management, State Emergency Operations Center, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, telephone number (502) 607-1622, facsimile number (502) 607-1251.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lucille Orlando

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum training requirements for search and rescue personnel.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS Chapter 39F requires the division to promulgate, administrative regulations establishing minimum training requirements for search and rescue personnel.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes minimum training requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator consistent with the intent of KRS Chapter 39F.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure minimum search and rescue training requirements are established within the context of a statewide comprehensive emergency management program and integrated emergency management system required under the KRS Chapters 39A to 39F.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 220 local rescue squads and 120 local search and rescue coordinators in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will become better trained to perform their basic search and rescue mission duties.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance, reporting, and paperwork requirements are generally consistent with existing procedures identified by the Division of Emergency Management. Very limited additional costs are anticipated. Estimated cost is less than \$100.

(b) On a continuing basis: Estimated cost is less than \$100.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Emergency Management will use agency funds and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Existing resources will be used to implement this administrative regulation and no additional funding or fee requirement is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? Yes. The Division of Emergency Management has applied tiering within this administrative regulation. The minimum search and rescue training requirements are not the same for all classes of the affected regulated entity. The minimum search and rescue training requirements are tiered to meet the basic training needs of a general rescue squad, or a specialized rescue squad, and local search and rescue coordinators in the Commonwealth.

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: Emergency management.

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

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 (+/-): 0

Expenditures(+/-): 0

Other Explanation: The purpose of this administrative regulation is to establish minimum training requirements for search and rescue personnel. Local or state government revenues and expenditures are not increased or decreased. There will be no increase in the number of employees needed and little other costs for local or state government. Existing governmental personnel and resources will implement the requirements of this administrative regulation.

KENTUCKY REAL ESTATE COMMISSION (Repealer)

201 KAR 11:071. Repeal of 201 KAR 11:070, Sponsoring of sales associate.

RELATES TO: KRS 324.112, 324.281(5)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 11:070 is no longer required as the technological advancements of the past decade have made this administrative regulation obsolete. The advancements in the field of real estate have made it possible for licensees to contact a principal broker from a distance beyond fifty (50) miles and have made it possible for the broker to supervise a licensee from a distance beyond fifty (50) miles.

Section 1. 201 KAR 11:070, Sponsoring of sales associate, is hereby repealed.

RON K. SMITH, Chairperson

JEFFREY BLAIR, General Counsel

APPROVED BY AGENCY: November 16, 2000

FILED WITH LRC: December 11, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001, 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:

(a) What this administrative regulation does: It repeals 201 KAR 11:070.

(b) The necessity of this administrative regulation: Many real estate licensees perform business operations from their residence. In addition, many licensees interact with the principal broker through phone and e-mail communication. The increasing utilization of these electronic communication methods makes the current 50-mile residence arbitrary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Statutory authority provides the Real Estate Commission may promulgate regulations to carry out KRS Chapter 324. Statutory authority also allows for repeal of regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As indicated in Section 1b of this document, the residence requirement does not carry out the intent or purpose of KRS Chapter 324. As the regulation does not effectively carryout the provisions of KRS Chapter 324, it should be eliminated.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky licensees are potentially affected by this change.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The arbitrary distance limitation of this regulation will be eliminated.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? No reasonable criteria exist to distinguish any class from another in this regard. The removal of the requirement will, and should, affect all licensees equally.

KENTUCKY REAL ESTATE COMMISSION (New Administrative Regulation)

201 KAR 11:440. Personal assistant duties.

RELATES TO: KRS 324.010(4)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.010(4) indicates a principal broker is the single broker responsible for the operation of the company with which he or she is associated. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation establishes requirements for a principal broker to exercise responsibility for the operations of a company with regard to unlicensed personnel activity.

Section 1. Personal assistants, office workers, or clerical workers may not:

- (1) Negotiate terms of a real estate transaction or real estate brokerage agreement;
- (2) Complete offers or contracts relative to a real estate transaction;
- (3) Disclose information that is available to a real estate licensee but is not available to the general public;
- (4) Attend a real estate closing;
- (5) Access information which requires membership in an industry trade group when the supervising licensee is not a member of the industry trade group;
- (6) Write or place advertisements without review by a licensee;
- (7) Express material opinions on any aspect of a real estate transaction to anyone other than the supervising licensee;
- (8) Interpret real estate contractual terminology for others; (9) Represent to others that he has a real estate license;
- (10) Be compensated in any manner other than salary or hourly wages with the exception that bonuses not based on performance are permitted; or
- (11) Perform any activity which requires a real estate license.

Section 2. Personal assistants, office workers, or clerical employees may perform the following tasks without a real estate license:

- (1) Distribute literature, serve refreshments, greet guests, procure guest signatures on a sign-in book, and perform other administrative tasks at an open-house if the licensee is physically present at the open house;
- (2) Provide the following general public information to others:
 - (a) Whether real estate is listed with the real estate company;
 - (b) Whether real estate is under contract with the company;
 - (c) Whether a real estate transaction has closed;
 - (d) The listing price of the real estate;
 - (e) Other information about the property in writing provided the disclosure:
 1. Is approved by the supervising licensee; and
 2. Does not violate the licensee's fiduciary duties to his client.
- (3) Appear in advertisements and have name appear in advertisements if the advertisement does not indicate or imply the assistant has a real estate license;
- (4) Contact others to set appointments on behalf of the supervising licensee;
- (5) Receive confidential information from a consumer relative to a real estate transaction if the information is communicated only to the supervising licensee;
- (6) Copy a key related to a real estate transaction at the direction of the supervising licensee; or
- (7) Open real estate for any purpose relative to the real estate transaction with the consent of the licensee's principal provided the assistant:
 - (a) Answers no questions about the real estate other than as specifically allowed by this administrative regulation or statute; and
 - (b) Does not show the real estate to a consumer.

Section 3. Supervision of a personal assistant, office employee, or clerical employee shall require:

- (1) A principal broker assign supervision duties for each assistant to one (1) licensee, which may be the principal broker, of the company;
- (2) The principal broker require all assistants working for a licensee of the company be informed of the requirements of this administrative regulation and KRS 324.030;
- (3) A principal broker establish a policy by which supervising licensees provide training for assistants in a manner reasonably ade-

quate to ensure compliance with this chapter;

(4) Supervising licensees provide reasonable supervision of assistants in a manner which will ensure compliance with this chapter; or

(5) Supervising licensees be reasonably accessible to assistants in a manner which allows the assistant to contact and locate the licensee concerning pending transactions.

RON K. SMITH, Chairperson

JEFFREY BLAIR, General Counsel

APPROVED BY AGENCY: November 16, 2000

FILED WITH LRC: December 11, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001, 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:

(a) What this administrative regulation does: Creates clear regulatory standards for real estate assistants who do not hold real estate licenses.

(b) The necessity of this administrative regulation: The real estate industry includes numerous support personnel who do not hold real estate licenses. These personnel have daily contact with consumers and have access to fiduciary information of the consumers. Real estate licensees must be able to provide assistants with direction as to what activities require a license and which do not. In an attempt to clarify what assistant activity requires a real estate license and what activity does not require a license, this regulation is proposed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The listed statutes provide the Real Estate Commission authority to promulgate regulations to effectively carry out and enforce the provisions of KRS Chapter 324.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidelines for licensees and assistants who are involved in the real estate brokerage industry.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who utilize unlicensed assistants will be affected by this new regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The real estate industry desires guidance on these issues. This regulation will allow licensees and real estate companies to gauge what is "allowed" and

what is "not allowed." Currently, there is much confusion on these issues and licensees desire clear regulatory guidance.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: No cost anticipated.
- (b) On a continuing basis: No cost anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not directly or indirectly establish any fees or funding.

(9) TIERING: Is tiering applied? Tiering is not applied to this amendment. Unlicensed assistants are utilized throughout the real estate brokerage industry. As the intent of this regulation is the obtaining of a clear and fair regulation for all, tiering is not applied.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

806 KAR 17:250. Notification requirements for drug benefits.

RELATES TO: KRS 304.17A-535

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes notification requirements of a managed care plan when removing a prescription medication from its drug formulary; when changing the supply amount in a prescription; and when prior authorization is required for a prescription medication.

Section 1. Definitions. (1) "Drug formulary" means a list of prescription medications preferred for use by a managed care plan and dispensed through a participating pharmacy to an enrollee.

(2) "Enrollee" is defined in KRS 304.17A-500(4).

(3) "Maintenance prescription medication" means a prescription drug taken for at least three (3) consecutive months.

(4) "Managed care plan" is defined in KRS 304.17A-500(8).

Section 2. Notification Requirements. (1) A managed care plan shall provide advance written notice to an enrollee identified as having filled a prescription within the immediately preceding six (6) months period at least sixty (60) days prior to:

(a) The removal of a maintenance prescription medication from its drug formulary;

(b) A change that restricts or reduces the quantity or dosage of a prescription medication supplied when a prescription is filled; or

(c) A requirement for prior authorization of a prescription medication is added.

(2) A written notification pursuant to subsection (1) of this section shall include:

(a) A clear explanation of the action being taken by the managed care plan;

(b) The name and phone number of a contact person to answer questions; and

(c) A description of the exceptions policy to the drug formulary developed in compliance with KRS 304.17A-535(4).

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: November 20, 2000

FILED WITH LRC: November 20, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001, at 11 a.m. (ET) at the Ken-

tucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlette Kay Hummel, Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification requirements of a managed care plan when removing a prescription medication from its drug formulary, when changing the supply amount in a prescription, and when prior authorization is required for a prescription medication.

(b) The necessity of this administrative regulation: This administrative regulation establishes uniform notification requirements for managed care plans when changing their formularies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110(1), in that this regulation establishes uniform notification requirements for managed care plans when changing their formularies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes uniform notification requirements for managed care plans when changing their formularies.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all 20 managed care plans issuing benefit plans in the Commonwealth of Kentucky.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Managed care plans will be required to provide written notice to enrollees when a drug is removed from the drug formulary. Written notice will also be required when a quantity of a drug is restricted or when a drug not subject to preauthorization requirements becomes subject to preauthorization requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance's existing budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not used because this administrative regulation applies to all managed care plans issuing benefit plans within the Commonwealth of Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

806 KAR 17:270. Telehealth claim forms and records.

RELATES TO: KRS 304.17A-138

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-138(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-138(4) requires that the department promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims.

Section 1. Definitions. (1) "ADA" means American Dental Association.

(2) "Electronic" or "electronically" is defined by KRS 304.17A-700(7).

(3) "HCFA" means Health Care Financing Administration.

(4) "Health benefit plan" is defined by KRS 304.17A-005(17).

(5) "Health care provider" or "provider" is defined by KRS 304.17A-005(18)(6).

(6) "Health insurer" or "insurer" is defined by KRS 304.17A-005(12).

(7) "Kentucky Uniform Billing Committee (KUBC)" is defined by KRS 304.17A-700(13).

(8) "National Uniform Billing Committee (NUBC)" is defined KRS 304.17A-700(14).

(9) "Telehealth" is defined by KRS 311.550(20).

(10) "UB" means uniform billing.

Section 2. Application. This administrative regulation shall apply to all insurers issuing health benefit plans in the state of Kentucky.

Section 3. Claim Forms. The following claim forms shall be used for reimbursement of telehealth consultations:

(1) A claim form for dentists shall consist of the ADA Form - J588 approved by the American Dental Association effective at the time the service was billed; and

(2) A claim form for all other health care providers shall consist of the HCFA - 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee effective at the time the service was billed.

Section 4. Retention of Records. A provider shall, upon request, provide a copy of the following to an insurer as support for a claim for reimbursement of a telehealth consultation:

(1) Written record which substantiates the request by the referring provider for the telehealth consultation by the primary care provider; and

(2) Written record of the telehealth consultation.

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) ADA Form - J588, "Dental Claim Form" (1999 version 2000); and

(b) Form HCFA - 1500, "Health Insurance Claim Form" (12-90 Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: November 30, 2000

FILED WITH LRC: December 1, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 2001, at 1 p.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 12, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlette K. Hummel, Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims.

(b) The necessity of this administrative regulation: KRS 304.17A-138(4) requires that the department promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17A-138(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17A-138(4).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers issuing health benefit plans in the state of Kentucky, all health care providers and dentists submitting telehealth claims to insurers issuing health benefit plans.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The department believes that the claim forms and records required to be maintained for telehealth claims are for the most part, already being used. However, the regulation will provide for uniformity in the forms that are used by providers when making telehealth claims.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The department anticipates minimal cost to implement this administrative regulation.

(b) On a continuing basis: The department anticipates minimal cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget for the Department of Insurance will be used to implement and

enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The department does not anticipate that an increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers licensed to engage in the health insurance activities in the state of Kentucky that provide health insurance coverage in the individual and small group markets after June 30, 1998. Neither is tiering applied with respect to persons in soliciting health insurance coverage since this administrative regulation applies to all persons soliciting health insurance coverage to individuals or non-employer small groups in Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Department of Insurance
Financial Standards and Examinations Division
(New Administrative Regulation)

806 KAR 49:020. Captive insurer application requirements.

RELATES TO: 2000 Ky. Acts ch. 434

STATUTORY AUTHORITY: KRS 304.2-110, 2000 Ky. Acts ch. 434, secs. 2(3), 14

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. 2000 Ky. Acts ch. 434, sec. 14 authorizes the Commissioner of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS 304.49. 2000 Ky. Acts ch. 434, sec. 2(3) authorizes the Commissioner of Insurance to promulgate administrative regulations concerning the application for a certificate of authority for captive insurers.

Section 1. The purpose of this administrative regulation is to set forth application requirements the commissioner deems necessary for the regulation of captive insurers, as authorized by the Captive Insurer Act, KRS 304.49. For the purposes of this administrative regulation, a reference to "company" shall mean captive insurer, unless otherwise specified.

Section 2. A captive insurer seeking to obtain a certificate of authority to engage in insurance business in Kentucky shall apply to the Kentucky Department of Insurance on the form prescribed by the commissioner.

Section 3. All documents required by 2000 Ky. Acts ch. 434, sec. 2(3), (4), (5) and (6) shall be submitted with a company's application seeking a certificate of authority to engage in insurance business in Kentucky or a statement describing the reason each document is not applicable.

Section 4. In addition to the processing of the application, an organizational investigation or examination may be performed by the department before an applicant is licensed as a captive insurer. The investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

Section 5. No person shall, in or from within this state, act as an insurance producer, broker, agent, salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

Section 6. Revocation. (1) The commissioner may, subject to the

provisions of this section, by order revoke the certificate of authority of the company:

(a) If the company has not commenced business according to its plan of operation within two (2) years of being licensed; or

(b) If the company ceases to carry on insurance business in or from within Kentucky; or

(c) At the request of the company; or

(d) For any reason provided in KRS 304.3-190 or 304.3-200.

(2) Before the commissioner revokes the certificate of authority of a company under subsection (1)(a) or (b) of this section, the commissioner shall give the company notice in writing of the grounds on which he proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within thirty days receipt of the notice. The commissioner shall take into consideration any objection timely filed and schedule an administrative hearing on the matter according to KRS Chapter 13B.

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001 at 10 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. Anyone who does not wish to be heard at the public hearing 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: Julie Mix McPeak, Interim General Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6032, Fax: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Mix McPeak, Interim General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation will proscribe the manner and form to be used by an entity seeking a certificate of authority as a captive insurer from the Department of Insurance and specify the manner a certificate of authority might be revoked.

(b) The necessity of this administrative regulation: 2000 Ky. Acts ch. 434, sec. 2(3) requires the Commissioner of Insurance to promulgate administrative regulations to specify the manner and form to be used by entities seeking authority to operate as a captive insurer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides additional detail to the content of the authorizing statute to delineate the precise procedure for application for a certificate of authority as a captive insurer, as permitted by the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a uniform, standard, and impartial procedure for the administration of the statutes authorizing the formation of a captive insurer.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statute: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all business entities interested in forming a captive insurer. The estimate of the department is that less than 10 entities will be forming a domestic captive insurer in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The entities affected by this regulation should support its promulgation. Prior to the 2000 Legislative Session, the ability to form a captive insurer was prohibited in Kentucky. Any entity interested in seeking authority to engage in captive insurance should be supportive of the regulation specifying the procedure.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to the Department of Insurance to implement this regulation initially, as all administrative functions will be provided by existing staff.

(b) On a continuing basis: Depending on the interest in captive insurer formation by the existing business community, additional staff may be necessary to adequately assess and monitor the captive insurer industry in Kentucky.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source will be the budget of the Kentucky Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor increase any fees indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied as this administrative regulation applies uniformly to all insurers applying for certificates of authority as captive insurers.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Department of Insurance
Financial Standards and Examinations Division
(New Administrative Regulation)

806 KAR 49:030. Captive insurer reporting requirements.

RELATES TO: 2000 Ky. Acts ch. 434

STATUTORY AUTHORITY: KRS 304.2-110, 2000 Ky. Acts ch. 434, secs. 7(2), 14

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. 2000 Ky. Acts ch. 434, sec. 14 authorizes the Commissioner of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS 304.49. 2000 Ky. Acts ch. 434, sec. 7(2) requires the Commissioner of Insurance to promulgate administrative regulations concerning the reporting requirements of captive insurers. This administrative regulation establishes reporting requirements for captive insurers.

Section 1. The purpose of this administrative regulation is to set forth the financial and reporting requirements the commissioner deems necessary for the regulation of captive insurers, as authorized by the Captive Insurer Act, KRS 304.49. For the purposes of this administrative regulation, a reference to "company" shall mean captive insurer, unless otherwise specified.

Section 2. An association captive insurer engaged in insurance in Kentucky shall annually submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers. The report shall be filed in the same format and content as required by

KRS 304.3-240. A pure or industrial insured captive insurer engaged in insurance in Kentucky shall annually submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers on the form prescribed by the commissioner.

Section 3. All captive insurers shall have an annual audit by an independent certified public accountant, authorized by the commissioner, and shall file an audited financial report with the commissioner on or before June 1 for the year ending December 31 immediately preceding. The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner. The annual audit shall consist of the following:

(1) Opinion of independent certified public accountant.

(a) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally-accepted auditing standards as determined by the American Institute of Certified Public Accountants.

(b) The opinion of the independent certified public accountant shall cover all years presented.

(c) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(2) Report of evaluation of internal controls.

(a) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, such controls as the system of authorization and approval, and the separation of duties.

(b) The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the commissioner.

(3) Accountant's letter. The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(a) That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(b) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(c) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this administrative regulation with the Kentucky Department of Insurance.

(d) That the accountant consents to the requirements of Section 6 of this administrative regulation and that the accountant consents and agrees to make available for review by the commissioner, his designee or his appointed agent, the work papers as defined in Section 6 of this administrative regulation.

(e) That the accountant is properly licensed by an appropriate state licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants.

(4) Financial statements. The following statements are required:

(a) Balance sheet.

(b) Statement of gain or loss from operations.

(c) Statement of changes in financial position.

(d) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds/surplus.

(e) Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, and shall include:

1. A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner.

2. A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

3. A narrative explanation of all material transactions and balances with the company.

(5) Certification of loss reserves and loss expense reserves.

(a) The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

(b) The individual who certifies as to the adequacy of reserves shall be approved by the commissioner and shall be a Fellow of the

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his competence in loss reserve evaluation to the commissioner.

(c) Certification shall be in such form as the commissioner deems appropriate.

(6) A filing fee for audited financial statements as proscribed by the commissioner.

Section 4. Companies, after becoming subject to this administrative regulation, shall within ninety (90) days report to the commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this administrative regulation.

Section 5. A company shall require the certified public accountant to immediately notify in writing an officer and all members of the board of directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner as required in 2000 Ky. Acts ch. 434, sec. 7. The company shall furnish such notification to the commissioner within five (5) working days of receipt.

Section 6. Work Papers. (1) Each company shall require the independent certified public accountant to make available for review and inspection by the commissioner or his appointed agent the work papers prepared in the conduct of the audit of the company.

(2) The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon.

(3) Any review by the commissioner shall be considered a part of an examination or investigation and all working papers obtained during the course of such examination or investigation shall be confidential.

(4) The company shall require that the independent certified public accountant provide photocopies of any of the working papers the Department of Insurance requests and the working papers may be retained by the department.

(5) Work papers include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

Section 7. Whenever the commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Treasurer of this state cash or securities approved by the commissioner or, to furnish the commissioner a clean irrevocable letter of credit issued by a bank chartered by the State of Kentucky or a member bank of the Federal Reserve System and approved by the commissioner. The company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner. If such company discontinues business, the commissioner shall return the deposit only after being satisfied that all obligations of the company have been discharged.

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001 at 11 a.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. Anyone who does not wish to be heard at the public hearing 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: Julie Mix McPeak, Interim General Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6032, Fax: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Mix McPeak, Interim General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will specify financial and reporting requirements the commissioner deems necessary for the regulation of captive insurers.

(b) The necessity of this administrative regulation: KRS 304.2-110 allows the commissioner to promulgate administrative regulations to promulgate rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. 2000 Ky. Acts ch. 434, sec. 14 authorizes the commissioner of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS 304.49. 2000 Ky. Acts ch. 434, sec. 7(2) requires the commissioner of Insurance to promulgate administrative regulations concerning the reporting requirements applicable to captive insurers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides additional detail to the content of the authorizing statute to delineate the precise reporting requirements for captive insurers, permitted to engage in the business of insurance by the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a uniform, standard, and impartial procedure for the administration of the statutes requiring reporting by authorized captive insurers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statute: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only authorized captive insurers will be affected by this administrative regulation. Presently, although the statute granting authority to apply for a certificate of authority as a captive insurer became effective on July 15, 2000, a certificate of authority has not been requested nor granted.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will clarify the number and extent of captive insurer reporting obligations to the Department of Insurance, as authorized by statute.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to the Department of Insurance to implement this regulation initially, as all administrative functions will be provided by existing staff.

(b) On a continuing basis: Depending on the interest in captive insurer formation by the existing business community, additional staff may be necessary to adequately assess and monitor the captive insurer industry in Kentucky.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source will be the budget of the Kentucky Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor increase any fees indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied as this administrative regulation applies uniformly to all insurers granted certificates of authority as captive insurers.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Department of Insurance
Financial Standards and Examinations Division
(New Administrative Regulation)

806 KAR 49:040. Captive insurer parents and affiliates.

RELATES TO: 2000 Ky. Acts ch. 434

STATUTORY AUTHORITY: KRS 304.2-110, 2000 Ky. Acts ch. 434, secs. 14, 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. 2000 Ky. Acts ch. 434, sec. 14 authorizes the Commissioner of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS 304.49. 2000 Ky. Acts ch. 434, sec. 17 requires the Commissioner of Insurance to promulgate administrative regulations concerning the control of risk management functions of a parent or affiliated company by a pure captive insurer as defined in 2000 Ky. Acts ch. 434.

Section 1. The purpose of this administrative regulation is to set forth requirements the commissioner deems necessary for the regulation of captive insurers, as authorized by the Captive Insurer Act, KRS 304.49. For the purposes of this administrative regulation, a reference to "company" shall mean captive insurer, unless otherwise specified.

Section 2. A pure captive insurer shall participate in the risk management function of any controlled unaffiliated business to be insured by the company and shall establish procedures for effective control of risk management activities regarding the controlled unaffiliated business. The commissioner or his designee may request evidence of a pure captive insurer's participation in the risk management functions of controlled unaffiliated business as a portion of a market conduct or financial examination authorized under KRS 304.2 or at any other time the commissioner deems necessary.

Section 3. Every company shall report to the commissioner within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity. Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

Section 4. In addition to the investment of funds in Section 3 of this administrative regulation, each company chartered in this state is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude such person from being a director or officer in more than one (1) insurance company. Each officer, director, and key employee shall file such disclosure with the insurer's board of directors yearly.

Section 5. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic captive insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in 2000 Ky. Acts ch. 434.

Section 6. Any change in the nature of the captive business from that stated in the company's plan of operation filed with the commissioner upon application requires prior approval from the commissioner. Any change in any other information filed with the application must be filed with the commissioner but does not require prior approval.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001 at 1 p.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. Anyone who does not wish to be heard at the public hearing 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: Julie Mix McPeak, Interim General Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6032, Fax: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Mix McPeak, Interim General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will proscribe the required control of risk management functions a pure captive insurer must implement and maintain regarding parent and affiliated companies. This regulation will also proscribe the manner of reporting affiliations of officers and directors and adopting conflicts of interest statements.

(b) The necessity of this administrative regulation: KRS 304.2-110 allows the commissioner to promulgate administrative regulations to promulgate rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. 2000 Ky. Acts ch. 434, sec. 14 authorizes the Commissioner of Insurance to establish and amend administrative regulations related to captive insurance companies as necessary to effectuate the provisions of KRS 304.49. 2000 Ky. Acts ch. 434, sec. 17 requires the Commissioner of Insurance to promulgate administrative regulations concerning the control of risk management functions of a parent or affiliate by pure captive insurers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides additional detail to the content of the authorizing statute to specify the manner a pure captive insurer shall control the risk management functions of a parent or affiliate. The regulation will also require disclosure of officers' and directors' affiliations and proscribe the adoption of conflict of interest statements by all captive insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a uniform and standard procedure for the management oversight of a pure captive insurer by parent or affiliate and administration of the statutes requiring reporting by authorized captive insurers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statute: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only authorized captive insurers will be affected by this administrative regulation. Presently, although the statute granting authority to apply for a certificate of authority as a captive insurer became effective on July 15, 2000, a certificate of authority has not been requested nor granted.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will clarify the manner a pure captive insurer shall control the risk management functions of a parent or affiliate. The regulation will also require disclosure of officers' and directors' affiliations and proscribe the adoption of conflict of interest statements by all captive insurers, as required by statute.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to the Department of Insurance to implement this regulation initially, as all administrative functions will be provided by existing staff.

(b) On a continuing basis: Depending on the interest in captive insurer formation by the existing business community, additional staff may be necessary to adequately assess and monitor the captive insurer industry in Kentucky.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source will be the budget of the Kentucky Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor increase any fees indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied as this administrative regulation applies uniformly to all insurers granted certificates of authority as captive insurers.

CABINET FOR HEALTH SERVICES
Commission for Children with Special Health Care Needs
(New Administrative Regulation)

902 KAR 4:085. Newborn hearing screening equipment grant award.

RELATES TO: KRS 200.460 to 200.490

STATUTORY AUTHORITY: KRS 194A.030(13), 194A.050, 211.647, HB 706

NECESSITY, FUNCTION, AND CONFORMITY: HB 706 authorizes the Commission for Children with Special Health Care Needs to conduct necessary activities to identify infants at risk for hearing loss. In order to assist hospitals in complying with the provisions of Chapter 11 of HB 706, the Commission for Children with Special Health Care Needs shall provide necessary funding for the hospitals to obtain the equipment needed. This administrative regulation establishes the

eligibility criteria, application process, services, reporting requirements and appeal rights for hospitals interested in receiving funding for newborn auditory screening equipment.

Section 1. Definitions. (1) "Audiologist" means a person licensed by the Commonwealth of Kentucky to provide audiological services.

(2) "Auditory brainstem response (ABR)" means an objective electrophysiologic measurement of the brainstem's response to the ear when stimulated with click sounds or tone bursts.

(3) "Automated auditory brainstem response (AABR)" means an automatic ABR resulting in a pass/refer outcome.

(4) "Kentucky Infants' Sound Start Hearing Screening Report" means an auditory screening report used for reporting pass or refer and "at risk" information to CSHCN.

(5) "Commission (CSHCN)" means the Commission for Children with Special Health Care Needs.

(6) "Discharge" means a release from a hospital to the biological parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(7) "Equipment" means an AABR, ABR or OAE unit used for a newborn hearing screening in a hospital prior to discharge.

(8) "Hospital" means a hospital in Kentucky with forty (40) or more births a year.

(9) "Kentucky Infants' Sound Start (Kiss)" means a program operated by CSHCN for the purpose of tracking infants referred from hospital-based UNHS programs through the use of information about the infant's newborn hearing screening to ensure timely, appropriate and complete services through referral, diagnostic and intervention services.

(10) "Manufacturer" means a company that produces and markets ABR, AABR or OAE equipment.

(11) "Newborn" means an infant in the hospital prior to his initial discharge.

(12) "Otoacoustic Emissions (OAE)" means an objective physiological test method for measuring responses directly elicited from the cochlea.

(13) "Physiological screening" means a testing of a newborn using AABR, ABR or OAE equipment.

(14) "Universal newborn hearing screening (UNHS)" means a hospital-based physiologic hearing screening program that tests at least ninety (90) percent of newborns prior to discharge.

Section 2. Hospital Eligibility Criteria. In order to be eligible for Newborn Hearing Screening Equipment Grant Funds, a hospital located in Kentucky shall be:

- (1) The location of at least forty (40) or more births annually; and
- (2) A hospital lacking hearing screening equipment for initiation of a UNHS program; or
- (3) A hospital in need of hearing screening equipment for expansion of an existing UNHS program.

Section 3. Application Process. (1) In order to be eligible for newborn hearing screening equipment grant funds, a hospital shall provide to CSHCN:

(a) A completed grant application form with supporting documentation, which shall include:

1. A narrative providing justification for the funding request;
2. Proof of completion of the May 2000 survey previously provided by the UNHS-CSHCN by inclusion of:
 - a. The survey; or
 - b. A letter from UNHS-CSHCN indicating their receipt of the survey;
- (b) A manufacturer or vendor equipment price quote for the requested equipment;
- (c) Proof of the hospital's accreditation by the Joint Commission on Accreditation of Healthcare Organizations;
- (d) The hospital UNHS contact;
- (e) Required letters of support, including a letter from:
 1. The local or regional audiologist;
 2. The hospital's chief executive office or president;
 3. The hearing screening coordinator.
 4. An attending primary care provider from the respective hospital;

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

5. The community's point of entry staff person with Kentucky's Early Intervention network system established pursuant to 908 KAR 2:210.

(2) Completed applications with supporting documentation shall be received by September 15, 2000 at 4:30 p.m. EST at the Universal Newborn Hearing Screening Program, C/O Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217. Faxed applications shall not be considered.

(3) Incomplete applications or one (1) not completed in accordance with provided instructions may not be considered for funding.

Section 4. Participation Requirements. A hospital meeting the criteria in Sections 2 and 3 of this administrative regulation shall be awarded funding if the following provisions are met:

(1) Equipment shall be purchased within thirty (30) days of receipt of funding;

(2) Hospital hearing screening personnel shall receive training within thirty (30) days of receipt of funding and annual training from that point on.

(3) Screenings shall begin within sixty (60) days of receipt of the funding;

(4) The hospital shall provide documentation that a screening shall be completed on at least ninety (90) percent of newborns in the hospital prior to their discharge.

(5) The hospital shall demonstrate its ability to:

(a) Report completed screenings by June 30 of each year; and

(b) Collaborate with UNHS-CCSHCN in program development or expansion, and implementation;

(6) A hospital not attaining at least a ninety (90) percent newborn screening rate as evidenced by quarterly statistics provided to the UNHS-CCSHCN database shall receive technical assistance from CSHCN in order to assist the hospital in attaining the ninety (90) percent rate; and

(7) Reporting requirements established in Section 6 shall be met.

Section 5. Grant Award. (1) Grants shall be ranked based on review of the application by selected CSHCN employees and the CSHCN Board of Commissioners.

(2) Award amounts shall be determined by rank order and funding available.

(3) No later than September 29, 2000:

(a) Successful applicants shall be notified by mail; and

(b) Applicants not awarded a grant shall be notified in writing using the U.S. Postal Services, registered receipt, returned mail.

(4) A contract shall be awarded in accordance with KRS Chapter 45A.

(5) Grant awards shall range from \$2,000 to \$10,000.

(6) A hospital awarded a grant shall at least match the grant amount on a dollar-for-dollar basis.

Section 6. Reporting Requirements. (1) A hospital shall report information to UNHS-CCSHCN pursuant to KRS 211.647.

(2) Information to be reported to UNHS-CCSHCN for a new birth who has failed the hearing test shall include the newborn's:

(a) Last name;

(b) First name;

(c) Middle name;

(d) Date of birth;

(e) Gender;

(f) Mother's last name;

(g) Mother's first name;

(h) Middle initial;

(i) Mother's maiden name;

(j) Mother's Social Security number.

(k) Address where the child shall be residing after discharge;

(l) Birth hospital's name;

(m) Tester's last name;

(n) Tester's first name;

(o) Tester's middle initial;

(p) Date of testing; and

(q) Test results.

(3) Information to be reported to UNHS-CCSHCN for a new birth who has passed the physiological and risk-factor hearing test shall not

include identifying information, but shall include the:

(a) Date the test was administered;

(b) Test results;

(c) Name of the county of residence for the newborn; and

(d) Name of the hospital where the test was administered.

(4) Reporting shall be completed on a Kentucky Infants' Sound Start Hearing Screening Report form.

(5) A hospital unable to provide a physiological screening for more than forty-eight (48) hours because of an equipment malfunction shall contact UNHS-CCSHCN by phone or fax as soon as staff are aware of the delay.

(6) Equipment purchases shall be registered with UNHS-CCSHCN within thirty (30) days of purchase.

(7) A hospital shall submit to UNHS-CCSHCN, proof that the equipment is calibrated to the manufacturer's specifications.

(8) Equipment not working shall be reported immediately to the manufacturer.

Section 7. Appeal Rights. (1) If a hospital which has not received a grant wishes to appeal, within thirty (30) days of denial of the grant, the applicant shall notify CSHCN to an administrative hearing.

(2) Notice of an administrative hearing shall be provided to the hospital in accordance with KRS 13B.050.

(3) The administrative hearing process shall be conducted in accordance with KRS 13B.080 through 13B.160.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Universal Newborn Hearing Screening - Hospital Survey, 2000 edition, Commission for Children with Special Health Care Needs;

(b) Universal Newborn Hearing Screening Report, 2000 edition, Commission for Children with Special Health Care Needs;

(c) Newborn Hearing Screening Equipment Grant Application and Instructions.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES GILDERSLEVE, Chairman

ERIC FRIEDLANDER, Executive Director

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 12, 2000

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001 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 January 16, 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: Jill Lewis, 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 AND TIERING STATEMENT

Agency Contact Person: Michelle King (502) 595-4459

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the grant award eligibility requirements and the process involved for awarding grants to hospitals so that they may conduct newborn hearing screenings in accordance with HB 706.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to award grants to eligible hos-

pitals so that they may conduct the newborn hearing screenings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the grant award process for newborn hearing screenings in accordance with HB 706. The cabinet's authority to promulgate regulations regarding this topic falls within the jurisdiction of KRS 194A.030, 194A.050, and 211.647 which grant the Commission for Children with Special Health Care Needs and the Cabinet for Health Services the authority promulgate administrative regulations.

(d) How this administrative regulation currently exists or will assist in the effective administration of the statutes: This administrative regulation will, in accordance with the authorizing statutes, establish a grant award process for hospitals so that they may conduct newborn hearing screenings, as authorized by statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Kentucky hospitals which have at least 40 births per year may be affected by this grant award.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All hospitals with 40 or more births per year will be able to comply with HB 706 and perform newborn hearing screenings, as they will be provided with the equipment to do so.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: It is estimated that the costs for equipment, personnel costs, outreach and program administration will be approximately \$1.2 million in FY 2001.

(b) On a continuing basis: The above-mentioned elements are estimated to cost approximately \$730,200 in FY 2002.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Kentucky Infant Sound Start Program Grant and State Tobacco Settlement funding appropriations are the funding sources to be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change of it is an amendment: There will be no increase in fees or funding to implement these amendments to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not implement any fee or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physical Health
(New Administrative Regulation)**

907 KAR 3:125. Chiropractic services and reimbursement.

RELATES TO: KRS Chapter 312, 42 CFR 440.230, 441 Subpart B, 42 USC 1396d(r)

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050, 205.520, 205.560

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 provisions relating to chiropractic services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Chiropractic service" means the diagnosis and the therapeutic adjustment or manipulation of the subluxations of the articulations of the human spine and its adjacent tissues performed by, and within the scope of licensure of, a licensed chiropractor in accordance with KRS 312.015 and 312.017.

(2) "Chiropractor" is defined in KRS 312.015.

(3) "Current procedural terminology code" or "CPT code" means the identifying code used by the department for reporting a medical service or procedure.

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

(5) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

(a) Provided in accordance with 42 CFR 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of a recipient, caregiver, or provider;

(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an existing emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR 441 Subpart B for eligible recipients under twenty-one (21) years of age.

(6) "Usual and customary charge" means the uniform amount that a medical provider charges to a private-pay patient or third-party payor in the majority of cases for a specific medical procedure or service.

Section 2. Covered Services. (1) A covered chiropractic service shall include the following:

(a) An evaluation and management service;

(b) Chiropractic manipulative treatment;

(c) Diagnostic X-rays;

(d) Application of a hot or cold pack to one (1) or more areas;

(e) Application of mechanical traction to one (1) or more areas;

(f) Application of electrical stimulation to one (1) or more areas; and

(g) Application of ultrasound to one (1) or more areas.

(2) Except as specified in Section 3 of this administrative regulation, a medically-necessary chiropractic service shall be covered to the extent, and subject to the service and reimbursement limitations, that the same service is covered by the department for a physician and shall be reported using:

(a) An evaluation and management CPT code;

(b) A chiropractic manipulative treatment CPT code;

(c) A diagnostic X-ray CPT code; or

(d) Physical modality application CPT codes for the following:

1. Application of a hot or cold pack to one (1) or more areas;

2. Application of mechanical traction to one (1) or more areas;

3. Application of electrical stimulation to one (1) or more areas; and

4. Application of ultrasound to one (1) or more areas.

(3) Coverage for a chiropractic service shall be based on medical necessity.

Section 3. Prior Authorization. (1) Prior authorization from the department shall be required for reimbursement of a covered service, specified in Section 2 of this administrative regulation, provided during

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

a chiropractor-recipient face-to-face contact with the same provider occurring after the initial twelve (12) contacts. If there has been an interval of at least six (6) months since the last chiropractor-recipient face-to-face contact with the same provider, up to twelve (12) additional chiropractor-recipient face-to-face contacts may be reimbursed, if medically necessary, without prior authorization from the department.

(2) Kentucky Form MAP-810, Chiropractic Prior Authorization Form, shall accompany medical documentation required to establish medical necessity.

Section 4. Reimbursement for Covered Services. (1) A charge for a chiropractic service submitted to the department for payment shall not exceed the usual and customary charge to a private-pay patient or third-party payor for an identical procedure or service.

(2) For reimbursement of a covered service, a chiropractor shall be paid the lesser of the chiropractor's usual and customary actual billed charge or an amount determined in accordance with the physician fee schedule established in 907 KAR 3:010.

Section 5. Conditions for Provider Participation. A participating chiropractor shall:

(1) Be licensed as a chiropractor in Kentucky or in the geographic location in which chiropractic services are provided;

(2) Have an active Medicare provider number; and

(3) Meet the requirements for provider participation in the Kentucky Medicaid Program in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:673.

Section 6. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 7. Incorporation by Reference Material. (1) "Ky. Form MAP-810, Chiropractic Prior Authorization Form, September 26, 2000 edition," is incorporated by reference.

(2) The 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

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: December 13, 2000

FILED WITH LRC: December 14, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001 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 January 16, 2001, 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: Jill Lewis, 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 AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for expanded coverage of chiropractic services as set forth in SB 294 of the 2000 General Assembly.

(b) The necessity of this administrative regulation: To comply with the chiropractic provisions of SB 294 of the 2000 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for payment to be made under the Medical Assistance Program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent that Medicaid pays for the same services provided by a physician.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows Medicaid coverage of chiropractic services provided by a licensed chiropractor as required by recent amendments to KRS 205.560.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation, not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation, not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation, not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation, not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: 154 chiropractic providers and all eligible Medicaid recipients.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will provide for continued coverage of chiropractic services for Medicaid recipients not eligible for this service prior to the implementation of 907 KAR 3:125E.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$1.5 million

(b) On a continuing basis: \$1.5 million annually

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund and restricted fund appropriations. Federal funds of \$1 million (70.55%) and state matching funds of \$.5 million (29.45%) will be expended.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change of it is an amendment: Authorization for this change was included in SB 294 of the 2000 General Assembly; however, funding for this initiative was not appropriated. The funding for this initiative is derived from a redirection of funds for current services in the enacted budget. In the Department for Medicaid Services, it is difficult to control costs in any way other than through a reduction in services, eligibles, or reimbursement rates, should it be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase fees.

(9) 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.

KENTUCKY TRAUMATIC BRAIN INJURY TRUST FUND BOARD
(New Administrative Regulation)

908 KAR 4:030. Traumatic brain injury trust fund operations.

RELATES TO: KRS Chapters 13B, 45A, 211.470 through 211.478
STATUTORY AUTHORITY: KRS 211.474(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.474(1) authorizes the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation establishes the operating procedures of the Traumatic Brain Injury Trust Fund Board of Directors, procedures for the selection of a benefit management program, the duties of the benefit management program, the procedure for obtaining Traumatic Brain Injury Trust Fund services, and the procedure for appealing a denial of an application for benefits.

Section 1. Definitions. (1) "Applicant" means a person who applies for a benefit, participates in the development of and agrees to a service plan for the use of the benefit, and for whom a completed service plan is submitted to the benefit management program.

(2) "Benefit" means financial assistance provided to cover the cost of services approved by the service plan review committee to a recipient of a benefit.

(3) "Benefit management program" or "program" means an entity that is incorporated to do business in the Commonwealth of Kentucky and that contracts with the Cabinet for Health Services, Department for Mental Health and Mental Retardation Services at the recommendation of the board to operate the Traumatic Brain Injury Trust Fund Program.

(4) "Behavior programming" means individually-designed strategies to increase a recipient's adaptive social behaviors.

(5) "Board" is defined in KRS 211.470(1).

(6) "Cabinet" is defined in KRS 211.470(2).

(7) "Case management" means assistance to develop a service plan; resource coordination; development of local resources; education of an applicant, recipient, or family member; and monitoring of the services received by a recipient as part of an approved service plan.

(8) "Case manager" means a person who provides case management services to applicants and recipients.

(9) "Community residential services" means retraining and rehabilitation of a recipient to perform home care and home management tasks. It may include:

(a) Assistance with:

1. Dressing;
2. Oral hygiene;
3. Hair care;
4. Grooming;
5. Bathing;
6. Housekeeping;
7. Laundry;
8. Meal preparation;
9. Shopping;

(b) The cost of room and board; and

(c) Twenty-four (24) hour supervision of a recipient.

(10) "Companion services" means nonmedical supervision and socialization services designed to prevent institutionalization and to assist a recipient in maintaining community placement.

(11) "Department" means the Department for Mental Health and Mental Retardation Services or its designee.

(12) "Environmental modification" means a physical adaptation to a recipient's home to help a recipient function with greater independence in the recipient's own home or which is necessary to accommodate medical equipment and supplies required for the recipient's welfare.

(13) "Fund" means the Traumatic Brain Injury Trust Fund as defined in KRS 211.470(4).

(14) "Occupational therapy" means the therapeutic use of self-care, work and leisure activities to enhance independent functioning or skill development.

(15) "Prevocational services" means services that are designed to develop the prerequisite skills necessary to prepare a recipient for

paid or unpaid employment. Prevocational services may include:

(a) Assisting a recipient to understand the meaning, value, and demands of work;

(b) Assisting a recipient to learn or reestablish skills, attitudes, and behaviors necessary for employment; and

(c) Assisting the individual to improve functional capacities.

(16) "Psychological and mental health services" means services designed to help a recipient to resolve personal issues or interpersonal problems resulting from a traumatic brain injury or provided to a recipient's direct caregiver to preserve the stability of a recipient's community living situation, as part of an approved service plan. Psychological and mental health services may include:

(a) Training to improve interpersonal skills;

(b) Social skills;

(c) Problem-solving skills;

(d) Training to remediate cognitive problems resulting from the brain injury;

(e) Treatment for substance abuse problems related to the brain injury;

(f) Psychological assessments; and

(g) Neuropsychological evaluations.

(17) "Recipient" means an applicant who has an approved service plan and who receives a benefit.

(18) "Respite care" means a service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver. Respite care may be provided in:

(a) The recipient's own home;

(b) A residence; or

(c) Another setting, if approved by the program.

(19) "Service plan" means a document that itemizes the services, equipment, or items which have been approved for payment by the service plan review committee.

(20) "Service plan review committee" means a committee composed of persons with traumatic brain injuries or their family members and professionals in the field of brain injury that has the responsibility to review each applicant's proposed service plan for the purpose of approving or denying approval of the requested benefits.

(21) "Specialized medical equipment and supplies" means items which are of direct medical or remedial benefit to a recipient and which help a recipient to maintain community placement.

(22) "Speech and language therapy" means an intervention designed to maximize a recipient's language, pragmatic, and cognitive skills. Speech and language therapy may include:

(a) Articulation therapy;

(b) The design of and instruction in the use of augmentative communication strategies or devices; or

(c) Cognitive retraining strategies.

(23) "Structured day program services" means a service performed in a nonresidential setting which is designed to develop and improve a recipient's community living skills and includes:

(a) Supervision;

(b) Specific training to allow a recipient to improve the recipient's functioning and to reintegrate into the community;

(c) Social skills training;

(d) Sensory skill development;

(e) Motor skill development;

(f) Teaching of concepts and skills necessary for the increased independence of the recipient; and

(g) Other services to increase:

1. Adaptive behavioral responses; and

2. Community reintegration.

(24) "Supported employment services" means supervision and training of a recipient in a work site at which persons without disabilities are employed, for a recipient who is unlikely to obtain competitive employment at or above minimum wage and who needs ongoing support to perform competitive employment.

(25) "Traumatic brain injury" is defined in KRS 211.470(3).

(26) "Trust fund" is defined in KRS 211.470(4).

(27) "Wrap around services" means services, equipment or items which will enhance a recipient's ability to maintain community placement or his quality of life and are not excluded by KRS 211.474(2)(e).

Section 2. Board Operating Procedures. (1) A board member shall

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

adhere to:

- (a) The bylaws of the board; and
- (b) The confidentiality requirements as specified in KRS 211.474(3).
- (2) If a member fails to act in accordance with the bylaws, the chair of the board shall recommend the dismissal of that member to the governor.
- (3) A board member shall not:
 - (a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:
 - 1. Personal;
 - 2. Professional; or
 - 3. Financial;
 - (b) Be physically present at a meeting at which an applicant's request is discussed or voted on if the member has a conflict of interest identified in paragraph (a) of this subsection; or
 - (c) Assist another individual, regardless of where the person resides, to complete an application for benefits from the fund, except as provided in subsection (4) of this section.
- (4) A board member may assist in the completion of application for benefits from the fund for himself, if eligible, or an eligible family member.

Section 3. Procedures for Selection of the Program. (1) The board shall issue a request for proposal in accordance with KRS 45A.080.

(2) The board shall review each proposal submitted in accordance with the request for proposal issued in accordance with subsection (1) of this section and recommend to the department an entity to operate the program under contract with the department.

(3) The board shall recommend an entity based upon consideration of:

- (a) The experience of the entity in the provision of services to individuals with traumatic brain injury;
 - (b) The priority of services to individuals with traumatic brain injury within the entity's overall operation;
 - (c) The expertise of the entity's staff in the provision of services to individuals with traumatic brain injury;
 - (d) The experience in the provision of case management services;
 - (e) The capacity of the entity to provide case management services to individuals with traumatic brain injury throughout the state;
 - (f) The experience in and the capacity of the entity to develop community resources for individuals with traumatic brain injury throughout the state;
 - (g) The capacity of the entity to distribute benefits from the fund to recipients;
 - (h) The capacity to manage applicant, recipient, benefit, and program evaluation data;
 - (i) The fiscal policies and practices of the entity and the financial stability of the entity;
 - (j) The accessibility of the entity to individuals with traumatic brain injury throughout the state;
 - (k) The entity's proposed cost to operate the program; and
 - (l) The entity's proposed procedures for evaluating the program.
- (4) The department shall contract with the entity recommended by the board contingent on the availability of funds unless the department determines that:

- (a) The board failed to adhere to the requirements of subsection (3) of this section; or
 - (b) That a board member has violated a requirement of Section 2(3) of this administrative regulation.
- (5) The contract between the department and the entity recommended by the board shall be in accordance with KRS 45A.075.

Section 4. Duties of the Program. (1) The program shall:

- (a) Establish a toll free telephone number for the purpose of enabling individuals with traumatic brain injury to apply for benefits from the fund;
- (b) Engage in public information activities for the purpose of informing individuals with traumatic brain injury about the availability of case management services and benefits from the fund and other sources;
- (c) Provide case management services to applicants and recipients statewide, including the provision of assistance to an applicant to

access needed supports and services regardless of funding source;

(d) Accept applications for benefits from the fund and distribute benefits to recipients based upon an approved service plan;

(e) Establish a service plan review committee for the purpose of reviewing proposed service plans for approval;

(f) Approve the rates of reimbursement for services with a service provider for the delivery of services to a recipient as a part of an approved service plan; and

(g) Assist in the development of local resources for individuals with traumatic brain injury.

(2) The provider of a service shall accept the rate approved in accordance with subsection (1)(f) of this section as payment in full, and shall not require additional payment from a recipient.

Section 5. Service Plan Review Committee Requirements. (1) The program shall establish a benefit review committee which shall include a minimum of:

(a) One (1) person with a brain injury or the guardian or advocate of a person with a brain injury; and

(b) One (1) professional with expertise in the field of traumatic brain injury.

(2) Membership on the service plan review committee shall be limited to twelve (12) consecutive months.

(3) A person who has served the term specified in subsection (2) of this section may be reappointed to the service plan review committee six (6) months after the date of the expiration of the person's most recent term of service on the committee.

Section 6. Eligibility. (1) An applicant shall be eligible for a benefit from the fund in accordance with:

(a) KRS 211.470(3); and

(b) KRS 211.474(2)(a) and (c).

(2) A resident of an institution or hospital shall not be eligible for benefits from the fund.

(3) An applicant shall provide medical documentation of the applicant's traumatic brain injury, including:

(a) A signed document from an applicant's physician stating that the applicant has a brain injury; or

(b) A copy of a medical report which documents that the person has a traumatic brain injury.

(4) An applicant shall document that the applicant has no funding source, other than the trust fund, which covers the type of service the applicant is requesting.

Section 7. Procedures for Obtaining a Benefit from the Fund. (1) A referral for assistance from the fund may be made by or on behalf of an eligible person by contacting the program by:

(a) Telephone;

(b) In person; or

(c) In writing.

(2) Upon receipt of a referral, the program shall assign a case manager to assist an applicant. The case manager shall:

(a) Assess an applicant's eligibility for a benefit;

(b) Identify an applicant's needs for service and supports;

(c) Identify potential resources to meet an applicant's need for services and supports;

(d) Assist an applicant in obtaining needed services and supports regardless of funding source; and

(e) Complete a proposed service plan which shall specify:

1. The name, address, and telephone number of the applicant;

2. The Social Security number of the applicant;

3. Medical documentation of the applicant's traumatic brain injury;

4. Documentation of the applicant's lack of a payor source for the requested service;

5. The requested benefit from the fund;

6. The relationship of receipt of the benefit to the applicant's continuing community placement and quality of life;

7. The applicant's own identification of needed services and supports;

8. The mechanism for distribution of benefits from the fund; and

9. The signature of an applicant, or the applicant's conservator or guardian, and indicating agreement with the terms of the service plan;

(3) The case manager shall submit the proposed service plan to

the service plan review committee for approval.

(4) The service plan review committee shall review the proposed service plan to determine if:

(a) An applicant is eligible for benefits from the fund in accordance with KRS 211.470(3) and 211.474(2) and in accordance with Section 6 of this administrative regulation;

(b) The benefit requested from the fund meets the requirements of KRS 211.474(2)(d); and

(c) The requested services are appropriately coordinated by a case manager.

(5) The service plan review committee may:

(a) Approve the proposed service plan; or

(b) Amend the proposed service plan; and

(c) Make recommendations to the applicant and the applicant's assigned case manager about:

1. Other means of meeting the applicant's need for services and supports; or

2. Other available resources.

(6) If the applicant disagrees with an amendment by the service plan review committee, the applicant may appeal the decision of the service plan review committee in accordance with Section 10 of this administrative regulation.

(7) The service plan review committee shall not approve the distribution of a benefit to a recipient in excess of \$15,000 within any twelve (12) month period and \$60,000 per lifetime except in accordance with Section 8(8) of this administrative regulation.

(8) The service plan review committee shall not approve the distribution of benefits to an applicant who does not meet the eligibility requirements established in Section 6(1) and (2) of this administrative regulation or if the requested benefits are intended for the benefit of a person other than the applicant.

(9) A service plan shall be signed by the director of the program or his designee, and the applicant or his conservator or guardian.

(10) A service plan shall be considered by the service plan review committee for approval for funding in the order in which it is received.

(11) A recipient shall receive a copy of the approved service plan.

(12) A service plan approved by the service plan review committee shall be submitted to the board for final approval.

(13) A recipient who has an approved service plan may change service providers within the approved service categories if there is no increased cost of services.

(14) A recipient may make substitutions permitted by subsection (13) of this section by informing the case manager of the changes by telephone or in writing.

(15) The case manager may approve a change in service plan made in accordance with subsections (13) and (14) of this section without review by the service plan review committee.

Section 8. Procedures for Obtaining a Benefit in Exceptional Circumstances. (1) A request for emergency assistance from the fund may be made by or on behalf of an applicant by contacting the program by telephone or in writing.

(2) A written service plan shall not be a requirement at the time a request for emergency assistance from the fund is made.

(3) The program shall convene a meeting of the service plan review committee to consider a request for emergency assistance no later than two (2) working days after receipt of the request.

(4) A request for emergency assistance may be approved by the service plan review committee under the following circumstances:

(a) The loss of the eligible applicant's or recipient's caregiver;

(b) The imminent loss of the eligible applicant's or recipient's home or community placement;

(c) The loss of the eligible applicant's or recipient's service provider, if that loss results in an immediate threat to the health, welfare, or safety of the eligible applicant or recipient; or

(d) An immediate threat to the health, welfare, or safety of the eligible applicant or recipient.

(5) An immediate family member may be paid from the fund to provide care to a recipient in an emergency for a period not to exceed sixty (60) days in any twelve (12) month period. Payment to the immediate family member in this circumstance may not exceed:

(a) \$1,000 in a thirty (30) day period; and

(b) \$2,000 for a sixty (60) day period.

(6) In an emergency, the service plan review committee may approve the distribution of benefits from the fund not to exceed \$2,000.

(7) If benefits are distributed from the fund in an emergency, the program shall assign a case manager to:

(a) Develop a written service plan which meets the requirements of Section 7(2)(e) of this administrative regulation; and

(b) Submit a written service plan to the service plan review committee no later than three (3) working days after the decision of the service plan review committee.

(8) The service plan review committee shall review the emergency service plan no later than two (2) working days after receipt.

(9) The board may waive the limits on expenditures required by Section 7(7) of this administrative regulation in an emergency, subject to the availability of funds if it determines that:

(a) The benefit from the fund is essential to ensure the immediate health, welfare, and safety of a recipient;

(b) The fund request is included in a service plan approved by the service plan review committee; and

(c) The service plan approved by the service plan review committee includes a provision for other funding after the exception to the limit expires.

(10) A recipient shall be eligible for only one (1) exception of the benefit limit, not to exceed \$7,500, and shall not be eligible to apply for additional waivers after one (1) has been approved.

(11) The service plan review committee shall not approve the distribution of benefits in violation of KRS 211.474(2)(e).

Section 9. Procedures for Distribution of Benefits from the Fund.

(1) Distribution of benefits from the fund may be made to:

(a) A recipient to enable the recipient to purchase a service;

(b) The guardian or conservator of a recipient to purchase a service;

(c) A local service provider; or

(d) To a combination of the individuals specified in paragraphs (a), (b) and (c) of this subsection.

(2) The payment mechanism shall be specified in the service plan.

(3) A recipient shall be liable to the service provider for the payment of services or other benefits delivered to the recipient under an approved service plan unless benefits are paid to a service provider in accordance with subsection (1)(c) of this section. Unapproved expenditures or costs remaining unpaid shall be the responsibility of the recipient and shall not be paid by the program or the board.

(4) The service provider or recipient shall provide documentation of the delivery of service or benefit to a recipient to the program monthly.

(5) A service shall be reimbursed or paid if it is delivered in accordance with a recipient's approved service plan.

(6) A service shall not be reimbursed in the absence of an approved service plan, except in accordance with Section 8(6) and (7) of this administrative regulation.

(7) Expenditures which are not included in an approved service plan shall not be the responsibility of the program, the board, the department, or the cabinet.

(8) At the discretion of the board, the costs of providing case management services to an applicant or recipient may be exempt from the benefit limits established in Section 7(7) of this administrative regulation.

Section 10. Procedures for Appealing the Denial of an Application for Benefits from the Fund. (1) The program shall notify the applicant in writing if the service plan review committee does not approve a requested benefit. Notification shall be made within five (5) working days of the decision of the service plan review committee.

(2) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit additional medical data, medical records, or medical documentation to support the diagnosis of the injury or additional medical opinions about the disability.

(3) The program may obtain an independent medical opinion at its own expense.

(4) The board may obtain an independent medical opinion at its own expense.

(5) Neither the program nor the board shall be liable for the cost of

a second opinion obtained by an applicant except in accordance with subsections (3) and (4) of this section.

(6) An applicant who wishes to appeal the denial of benefits shall do so by notifying the program in writing within thirty (30) days of notification of the denial.

(7) Upon receipt of a written appeal, the program shall encumber funds in the amount requested until final resolution of the appeal.

(8) The program shall acknowledge receipt of a written appeal, in writing, within three (3) working days of receipt and shall perform a review of the denial within ten (10) working days of receipt.

(9) The program shall assure that the staff members who review the denial have not been involved in the original decision regarding an applicant's eligibility or request for benefits.

(10) The program shall provide an opportunity for an applicant or his representative to appear before a representative of the program to present facts or concerns about the denial of benefits.

(11) The program shall inform an applicant, in writing, of the decision resulting from the review of the denial within ten (10) working days of the decision.

(12) An applicant who has not received satisfaction in the applicant's appeal to the program may appeal to the board. An appeal to the board must be:

(a) In writing;

(b) Made within thirty (30) days of receipt of the decision by the program; and

(c) Submitted to the Brain Injury Services Unit of the department.

(13) The Brain Injury Services Unit shall acknowledge receipt of a written appeal in writing and notify the chair of the board in writing of the appeal not later than five (5) working days after receipt of the appeal.

(14) The board shall direct the Brain Injury Services Unit to request the Division of Administrative Hearings of the Office of the Attorney General to conduct a hearing pursuant to the requirements of KRS Chapter 13B.

(15) The case manager and other representatives of the program shall be available to testify and be subject to cross examination on the basis of the decision subject to appeal.

(16) Following a hearing, a recommended decision containing findings of fact and conclusions of law shall be forwarded from the Division of Administrative Hearings of the Office of the Attorney General to the board.

(17) A recipient may submit exceptions to the recommended order of the attorney general to the Brain Injury Services Unit.

(18) The board shall review the recommendation of the Division of Administrative Hearings of the Office of the Attorney General and any exceptions filed and shall render a final decision in accordance with KRS 13B.120. The final order shall make clear reference to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

GLYN CALDWELL, M.D., Chairman

APPROVED BY AGENCY: November 20, 2000

FILED WITH LRC: November 28, 2000 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held January 23, 2001 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 16, 2001, five (5) days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (FAX).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Littlefield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operating procedures of the Traumatic Brain Injury Trust Fund Board of Directors, procedures for the selection of a benefit management program, the duties of the benefit management program, the procedure for obtaining Traumatic Brain Injury Trust Fund services, and the procedure for appealing a denial of an application for benefits.

(b) The necessity of this administrative regulation: This regulation is needed to specify board operating procedures, duties of a benefit management program, requirements for provision of benefits from the trust fund, procedures for provision of case management and other services, requirements for application for benefits, development of service plans for benefit recipients, and procedures for an appeal of the denial of benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation specifies procedures for selecting a benefit management program to operate the program, for determining eligibility for benefits, distributing benefits, and providing services for recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will specify procedures for the benefit management program, benefits administration, applications for benefits, eligibility determination and development of individual service plans for recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department estimates that 150 individuals who have a traumatic brain injury, and are eligible for benefits from the trust fund will be affected by application, eligibility and service plan development requirements. In addition, businesses or organizations which respond to a request for proposals to operate a benefit management program will be affected by the requirements of the request for proposals, and associated selection criteria which is required by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation will require the Traumatic Brain Injury Trust Fund Board of Directors to select an entity to operate the Benefit Management Program and to hear appeals of denied requests. This will require applicants for assistance from the Trust Fund to provide documentation of a brain injury and to provide documentation that there is no other payor available for requested services or items. It will require applicants to assist in the development of and to approve a service plan for the provision of the requested benefit from the Trust Fund. This regulation will require the selected benefit management program to establish a toll free number and to engage in public information activities, to provide case management services to applicants and recipients statewide, to accept applications and to assist applicants in the development of a service plan, to review and approve requests for assistance from the trust fund, to negotiate payment rates and to pay vendors for services rendered to recipients, and to assist in the development of local resources for persons with traumatic brain injuries.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Traumatic Brain Injury Trust Fund Board has allocated \$1,700,000 to operate this program for each year of this biennium.

(b) On a continuing basis: The Traumatic Brain injury Trust Fund Board will allocate monies to operate this program based upon the amount of funds accumulated in the trust fund.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is the Traumatic Brain Injury Trust Fund established by KRS 211.476.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The equal "protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

922 KAR 1:420. Child fatality or near fatality investigations.

RELATES TO: KRS 600.020(6), (37), (41), 42, 620.030(3), 620.040(1), (2), 620.050(6), 42 USC 5106a(b)(2)(A)(v)(IV), (vi), (b)(4)(A), (c)(4)(A)(iii)(II), (d)(5), (6), (11)

STATUTORY AUTHORITY: KRS 194B.050(1), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) and 605.150(1) requires the Secretary for the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children. This administrative regulation sets forth the procedures for child protection investigations in a case of child fatality or near fatality by the Cabinet for Families and Children in compliance with KRS 620.040(1) and (2).

Section 1. Definitions. (1) "Cabinet" is defined at KRS 600.020(6).

(2) "Child fatality" is defined at KRS 211.684.

(3) "Near fatality" is defined at KRS 600.020(37).

(4) "Parent" is defined at KRS 600.020(41).

(5) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child.

Section 2. Child Fatality or Near Fatality Investigations. (1) The cabinet shall investigate a report of child fatality or near fatality occurring allegedly due to abuse or neglect by a:

- (a) Parent;
- (b) Guardian; or
- (c) Person exercising custodial control or supervision.

(2) When there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of a surviving child through immediate assessment and completion of a continuous quality assessment (CQA) in accordance with 922 KAR 1:330, Section 3(6).

(3) When a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the Office of the Director of the Division of Protection and Permanency.

(4) When a fatality or near fatality occurs to a child committed to the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:

- (a) The biological or legal parents; and
- (b) The Office of the Director of the Division of Protection and Permanency.

(5) If parental rights have been terminated and there are special circumstances including on-going contact with the child, the cabinet may notify the biological or legal parents when a fatality or near fatality

occurs with the child.

(6) When a child identified as a protection and advocacy client dies as the result of alleged abuse or neglect, the cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Cabinet for Public Protection and Regulation when:

(a) The alleged perpetrator is a person exercising custodial control or supervision; or

(b) The child fatality occurred as a result of placement into a seclusion room pursuant to 922 KAR 1:390, Section 1(14), or therapeutic hold was applied pursuant to 922 KAR 1:300, Section 1(31).

(7) When the cabinet learns of a fatality of a child in the custody of the cabinet, notification of the fatality by the cabinet shall be sent in writing to:

(a) The judge of the committing court; and

(b) The guardian ad litem for the deceased child.

(8) Public disclosure may occur in a case of child abuse or neglect that has resulted in a child fatality or near fatality pursuant to KRS 620.050(6).

(9) Unless parental rights have been terminated, funeral arrangements of a child in temporary custody or committed to the cabinet remain the responsibility of the biological or legal parent.

(10) If the alleged perpetrator was not a parent, guardian, or person exercising custodial control or supervision, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(3).

Section 3. Notice of Initial Findings of Investigation. The cabinet shall provide notice in accordance with KRS 620.040(1) and (2), in accordance with 922 KAR 1:330, Section 8(4) and (5).

DIETRA PARIS, Commissioner

HIREN DESAI, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 13, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, 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 January 16, 2001, 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: Kellie Peace, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will clarify policy regarding an investigation of a child fatality or near fatality; establish parameters for completion of a risk assessment for any remaining children within the household, establish notification requirements; and allow for public disclosure as a result of a child fatality or near fatality pursuant to KRS 620.050

(b) The necessity of this administrative regulation: This administrative regulation sets forth the procedures for child protection investigations in a case of child fatality or near fatality by the Cabinet for Families and Children in compliance with KRS 605.150 and 620.040.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This proposed administrative regulation results in compliance with KRS 605.150, 620.040 and 42 USC 5106a(b)(2)(A)(v)(IV), (vi), (b)(4)(A), (c)(4)(A)(iii)(II), (d)(5), (6) and (11).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This proposed ad-

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

ministrative regulation complies with KRS 605.150, 620.040, and 42 USC 5106a(b)(2)(A)(v)(IV), (vi), (b)(4)(A), (c)(4)(A)(iii)(II), (d)(5), (6) and (11).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing regulation, but is a new regulation. Therefore, this section does not apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities are individuals involved in child protective services investigation (CPS) investigations as an alleged victim, alleged perpetrator, CPS worker, law enforcement official or other individuals having an interest in the well-being of a child committed to or in the custody of the cabinet. There are approximately 25 children per year involved in CPS child fatality and near fatality investigations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Individuals impacted by the implementation of this administrative regulation will be able to determine precisely what type of child fatality or near fatality cabinet employees shall investigate and when the investigation shall be conducted by other law enforcement officials.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) This administrative regulation will not result in any additional cost.

(b) On a continuing basis: This administrative regulation will not result in any additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed administrative regulation does not result in any increased cost to the cabinet. This administrative regulation was the result of language taken from 922 KAR 1:330, Child protective services, which is currently being administered by the cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed administrative regulation will not result in any increase of fees or cost to the cabinet.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly. This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not required, the cabinet will implement this policy statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 5106a(b)(2)(A)(v)(IV), (vi), (b)(4)(A), (c)(4)(A)(iii)(II), (d)(5), (6) and (11)

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 42 USC 5106a(b)(2)(A)(v)(IV), (vi), (b)(4)(A), (c)(4)(A)(iii)(II), (d)(5), (6) and (11) and applied in a like manner on a statewide basis.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (New Administrative Regulation)

922 KAR 1:430. Child protective services in-home case planning and service delivery.

RELATES TO: KRS 600.010, 600.020, 605.130, 620.050(3)

STATUTORY AUTHORITY: KRS 194B.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the Secretary for the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children. This administrative regulation sets forth the procedures for delivery of ongoing in-home case planning and service delivery for child protection cases of abuse, neglect, or dependency by the Cabinet for Families and Children in compliance with KRS 605.130.

Section 1. Definitions. (1) "Cabinet" is defined at KRS 600.020(6).

(2) "Case planning" means a process where the cabinet works with the family and other involved parties to develop a case plan. The case plan shall identify conditions within a family which may cause the threat of harm to a child and that need to be changed, and the services necessary to bring about familial changes in order to facilitate a child's safety and well being in the home environment.

(3) "Permanency goals" are in accordance with 922 KAR 1:140, Section 4.

(4) "Prevention plan" means developing specific strategies and behaviors the family or individual intends to practice to prevent reoccurrence of the abusive or neglectful situation.

Section 2. In-Home Case Planning. (1) When a case is to be opened and the cabinet has determined a child shall remain in the home, the cabinet shall review the results of the investigation or the family in need of services assessment conducted pursuant to 922 KAR 1:330, Section 3(8)(a)1 and 2, that includes:

(a) Reviewing the case history;

(b) Initiating contact with a family;

(c) A P&P-1282, Family Case Plan, shall be completed with input from the family and community supports when parents agree pursuant to 922 KAR 1:140, Sections (3) and (5); and

(d) A CPS prevention plan may be completed with input from family and community supports.

(2) The continuous quality assessment (CQA) shall be completed or reviewed in accordance with 922 KAR 1:330, Section 3(6).

(3) The CQA shall be completed at a minimum of every six (6) months prior to the periodic case plans.

(4) A DCBS-154, Service Complaint, shall be mailed or hand delivered to a family advising them of the right to a fair hearing in accordance with 922 KAR 1:320.

Section 3. Service Delivery Plan. (1) If a case plan is required, a service delivery plan shall be provided as specified in a family's case plan. Service delivery plan shall encompass:

(a) Identified expectations of a family and the cabinet; and

(b) Initiating linkage to community resources.

(2) When a child continues to reside in the home of a parent or guardian, the cabinet shall make a monthly in-home, face-to-face visit with the family and child to:

(a) Observe the interaction between parent, child and siblings;

(b) Determine the appropriateness of interactions;

(c) Determine if parenting skills need improving; and

(d) Identify the protective capacity of the parent.

(3) If the home environment was indicated as an issue in the case plan, an in-home visit to assess the home shall be conducted.

Section 4. Case Closure and Aftercare Planning. (1) A CQA shall be completed before an in-home case is closed pursuant to 922 KAR 1:330, Section 3(6).

(2) The decision to close a child protective services assessment or case shall be based on documentation that the original factors result-

ing in abuse, neglect or dependency or the risk of the abuse, neglect or dependency has been resolved to the extent that the parent or guardian is able to:

- (a) Protect the child; and
- (b) Meet the needs of the child.
- (3) Consideration for closure of a child protective service case may occur if the following conditions are met:
 - (a) A child is no longer in need of protection; and
 - (b) The case planning or permanency goals have been achieved.
 - (4) The family shall be:
 - (a) Notified in writing of the decision to close the protective services case; and
 - (b) Given a DCBS-154, Service Complaint, in person or by certified mail, advising an individual of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.
 - (5) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop an aftercare plan by:
 - (a) Linking the family to community resources;
 - (b) Continuing preventative measures; and
 - (c) Instructing the family in how to use the aftercare plan.
 - (6) The focus of the aftercare plan shall be to prevent a reoccurrence of abuse, neglect or dependency.

Section 5. Incorporation by Reference. (1) "Prevention Plan", edition 11/00, is incorporated by reference.

(2) This material made 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
HIREN DESAI, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: December 12, 2000

FILED WITH LRC: December 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 2001, 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 January 16, 2001, 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: Kellie Peace, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation will:
 1. Establish policy for transferring a case from investigation to on-going services;
 2. Require the development and review of a case plan with the family;
 3. Establish minimum contact by a child protective services worker with the family in an on-going case and state the purpose of the contact;
 4. Address assessment criteria for determination of case closure; and
 5. Establish criteria for aftercare services.
 - (b) The necessity of this administrative regulation: This administrative regulation sets forth the procedures for delivery of on-going in-home case planning and service delivery for child protection cases of

abuse, neglect, or dependency by the Cabinet for Families and Children in compliance with KRS 605.130.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This proposed administrative regulation results in compliance with KRS 605.130.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This proposed administrative regulation complies with KRS 605.150, 620.040 and 42 USC 5106a.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation, but is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation, but is a new administrative regulation. Therefore, this section does not apply.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation, but is a new administrative regulation. Therefore, this section does not apply.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation, but is a new administrative regulation. Therefore, this section does not apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities are individuals and households who qualify for on-going in-home case planning and service delivery. There is an estimated projected 10,000 families per month, receiving on-going in-home case planning and service delivery.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There is an estimated projected 10,000 families per month that will be impacted by this new regulation through enhanced service delivery from child protective services workers. The families receiving services will participate in the development of their case plan, aftercare plan and be informed about the specific purpose of a contact by a child protective services worker.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The administrative regulation will not create any additional compliance, reporting or paperwork requirements.

(b) On a continuing basis: The administrative regulation will not result in any additional cost to the cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed administrative regulation does not result in any increased cost to the cabinet. This proposed administrative regulation was the result of language taken from 922 KAR 1:330, Child protective services, which is currently being administered by the cabinet and included in the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed administrative regulation will not result in any increase of fees or cost to the cabinet.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not required, the cabinet will implement this policy statewide.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 12, 2000

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 12, 2000 at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the November 14, 2000 meeting were approved.

Present were:

Members: Representative John Arnold, Chairman; Senators Joey Pendleton, Richard "Dick" Roeding, and Marshall Long; Representatives Woody Allen, James Bruce, and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Edna Lowery, Susan Wunderlich, Angela Phillips, Ellen Steinberg, Ellen Benzing.

Guests: Pat Arnold, Prosecutors Advisory Council; Jackie Shrout, Howard Lawson, Daniel F. Egbers, Johnny R. Keene, Personnel Cabinet; Scott Porter, Office of Attorney General; Caroline Bevins-Taylor DVM, Nancy L. Black, Board of Veterinary Examiners; Becky Klusch, Board of Physical Therapy; Mark Farrow, Department of Agriculture; Ruth Thompson, Emily Burks, Cabinet for Economic Development; Hank Wiseman, Diana Andrews, Millie Ellis, Heather Weese, Natural Resources and Environmental Protection Cabinet; Brenda Priestley, Tamela Biggs, Department of Corrections; Kevin M. Noland, Board of Education; Sheila Vice, Terry Vance, Department of Education; Mary Ellen Wiederwohl, Education Professional Standards Board; Sherry Deatrick, Michael Harmon, Workforce Development Cabinet; Rick Johnstone, Department of Alcoholic Beverage Control; Suetta Dickinson, Randy Peppers, Ellen Navolio, Robin Coombs, Vicky Horn, Mona Carter, Ralph Von Derau, Department of Insurance; Judith Walden, Department of Housing, Buildings and Construction; Shirley Eldridge, Ann Gordon, Mike Littlefield, Pamela J. Aldridge, Charles Kendell, Jim Carreer, Cabinet for Health Services; Stephanie Brammer-Barnes, Janice Kline, Robert L. Blackburn, Cabinet for Families and Children; Bart Baldwin, Children's Alliance; Mike Mayes, Bob Barnett, Kentucky Pharmacists Association; Lloyd Cress, AIK; Jon OShaughnesy, Lake Cumberland Regional; Ronny Pryor, Life-Point Hospital; Sam Crawford, Kentucky Farm Bureau; Mike Rodman, KAHCF; Dan Walton, KMHI/KAPA; Gay Dwyer, Kentucky Retail Federation; Jim Carlross, HBAK; Nancy Galvagni, Kentucky Hospital Association.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Office of the Attorney General: Prosecutors Advisory Council: Medical Examination of Sexual Abuse Victims

40 KAR 3:010 & E. Payment schedule to hospitals, physicians and sexual assault nurse examiners for medical examination of victims of sexual offenses. Pat Arnold represented the Council. This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was deleted to remove superfluous language, not related to the statutory mandate; (3) Section 2 was amended for minor technical corrections; and (4) the TITLE was amended to delete superfluous language as required by KRS 13A.222(4)(a).

Personnel Cabinet, Classified

101 KAR 2:106. Annual leave sharing procedures. Howard Lawson, Office of Administrative Services, Dan Egbers, General Counsel, Johnny Keene, Office of Employee Evaluations, and Jackie Shrout, Director, Employee Records Division, represented the Cabinet.

In response to questions by Senator Roeding, Mr. Egbers stated that this administrative regulation treated classified and unclassified employees the same. The annual leave sharing procedures mirrored the sick leave sharing procedures which had been in effect for many years. House Bill 265, sponsored by Representative Barrows, was enacted to enable employees to donate or receive annual leave if the employee was required to miss at least ten days of work because of a natural disaster or fire. The similar donation program for sick leave sharing had worked effectively and efficiently and the Cabinet antici-

pated the annual leave program to work the same way.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to: (a) delete provisions that repeated or summarized KRS 18A.203, as required by KRS 13A.120(2)(e) and (f); (b) specify the names of the required application and request forms; and (c) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); (4) a new Section 2 was created to clearly establish the employee eligibility requirements; and (5) a new Section 4 was created to incorporate by reference the required forms.

101 KAR 2:180. Employee performance evaluation system. In response to questions by Senator Roeding, Mr. Egbers stated that this administrative regulation required evaluations of all classified employees but did not apply to unclassified employees. The unclassified employees were not included in the evaluation system because the procedures provided a right to appeal to the Personnel Board and that right only applied to merit system employees.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to: (a) establish the annual performance period for the first year of the program; and (b) specify the name of the required form; and (4) Sections 1, 3, 5, 6, 7, 8, and 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4) and 13A.2251(2); and (b) drafting requirements of KRS 13A.222(4).

Board of Physical Therapy

201 KAR 22:070. Requirements for foreign-educated physical therapists. Becky Klusch, Executive Director, represented the Board.

In response to questions by Chairman Arnold, Ms. Klusch stated that this administrative regulation reduced the amount of required supervised practice time for foreign educated physical therapists from one year to three months. If a therapist did not successfully complete the supervised work, the therapist was given an additional three month period for successful completion. After six months, the therapist would not be eligible to practice in Kentucky. Three or four foreign educated physical therapists came into Kentucky to practice within the last year. This administrative regulation would not affect the students educated in Kentucky.

In response to questions by Senator Roeding, Ms. Klusch stated that she was not familiar with the reasons for decreasing the score on the test of spoken English from 55 to 50. The reduction in the required supervised practice time would enable practitioners to evaluate therapists in a shorter time frame and to remove less competent therapists in a timelier manner. The administrative regulation also required foreign-educated physical therapists to practice, and be licensed, in their country prior to working in Kentucky.

Subcommittee staff stated that this administrative regulation established the score at the same level that was the national standard for tests for persons who were educated in a foreign program. The reduction in the required supervised practice time would protect consumers because students could be removed after six months instead of one year.

This administrative regulation was amended as follows: Sections 1, 2 and 3 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Department Of Agriculture: Division of Markets: Ginseng

302 KAR 45:010. Ginseng, general provisions. Mark Farrow, General Counsel, represented the Department.

In response to questions by Representative Allen, Mr. Farrow stated that this administrative regulation was amended to conform to

federal standards by allowing for survival of the species and was not the result of Kentucky legislation. He was not aware of a fee charged for a ginseng dealer license. The costs of the licenses and record reporting were absorbed as part of the Department's administrative costs. Violations of the ginseng laws were taken seriously by the Department and the federal government, because the plant was fragile. The Department would enforce this administrative regulation when a complaint was filed.

Representative Allen stated that the government should not be involved in regulating a process which the government was not able to enforce or properly monitor. Rather than enforcing requirements without proper monitoring capabilities, the government should encourage growers to have proper respect for the plants.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) a new Section 12 was created to incorporate by reference the application form ("Kentucky Ginseng Dealer Application") and the reporting forms (American Ginseng Export Certificate, Dealer Transaction Log - Sales, Ginseng Dealer Purchase Record, and Wild ginseng Purchase Record) used by the department.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: Permits, Registrations, and Prohibitory Rules

401 KAR 52:001. Definitions for 401 KAR Chapter 52. Diana Andrews, Assistant Director, and Hank Wiseman represented the Cabinet.

In response to questions by Senator Roeding, Ms. Andrews stated that the definitions established in this administrative regulation were not more stringent than the federal definitions.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to: (1) correct statutory citations; and (2) correct minor typographical errors.

401 KAR 52:020. Title V permits. In response to questions by Senator Roeding, Mr. Wiseman stated that the material incorporated by reference had not been changed since the administrative regulations were filed after the public hearing. Title V, which was part of the Clean Air Act, referred to an operating permits program which required that all sources which emitted above a certain pollution level have an operating permit that contained all the applicable requirements for the source in one permit.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3, 7, 11, 12, and 15 were amended to correct minor typographical errors; and (2) Section 21 was amended to establish the requirements for compliance certifications, including the deadline for submissions.

401 KAR 52:030. Federally-enforceable permits for non-major sources. In response to a question by Senator Roeding, Mr. Wiseman stated that the Cabinet had proposed an amendment to this administrative regulation, 401 KAR 52:020, and 401 KAR 52:040, at the request of AIK Industries. The amendment clarified when each type of source would be required to submit an annual compliance certification, which sources were required to submit the certification, and when the certifications were required.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, 7, 11, and 12 were amended to correct minor typographical errors; and (2) Section 21 was amended to establish the requirements for compliance certifications, including the deadline for submissions.

401 KAR 52:040. State-origin permits. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 11 and 19 were amended to correct minor typographical errors; and (2) Section 19 was amended to establish the requirements for compliance certifications, including the deadline for submissions.

401 KAR 52:050. Permit application forms. This administrative regulation was amended as follows: the NECESSITY, FUNCTION,

AND CONFORMITY paragraph and Sections 1 and 2 were amended to correct minor typographical errors.

401 KAR 52:060. Acid rain permits. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a minor typographical error.

401 KAR 52:070. Registration of designated sources. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct minor typographical errors.

401 KAR 52:080. Regulatory limit on potential to emit. In response to questions by Chairman Arnold, Mr. Wiseman stated that this administrative regulation allowed sources that had the potential to emit enough to be a major source, but whose actual emissions were less than fifty percent of that level, to avoid Title V if the source maintained records that showed the source stayed below that fifty percent level. This administrative regulation was strictly enforced and the records were checked regularly.

In response to a question by Senator Roeding, Mr. Wiseman stated that the fifty percent level was the same level established in the federal program. This administrative regulation was promulgated many years ago before the federal government developed its own program that deferred sources with actual emissions of less than fifty percent. However, because the federal program was ending, Kentucky was required to have its own program approved as part of its state implementation plan or those sources would be required to have a Title V permit.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct minor typographical errors.

401 KAR 52:090. Prohibitory rule for hot mix asphalt plants. In response to questions by Senator Roeding, Mr. Wiseman stated that this administrative regulation established a tonnage limit for the amount of asphalt a plant could produce each year, depending on whether the plant was a batch or drum-mix plant. If the plant stayed below the tonnage limits, the plant was not required to have a Title V permit.

Ms. Andrews stated that this administrative regulation was developed in conjunction with, and supported by, the industry. This administrative regulation did not apply artificial limits to the industry to keep them from operating, but rather kept the plants out of the Title V permitted arena.

In response to a question by Chairman Arnold, Mr. Wiseman stated that this administrative regulation had been in effect for many years and was being recodified to a new chapter of the Kentucky Administrative Service.

In response to questions by Representative Allen, Mr. Wiseman stated that this administrative regulation affected 120 asphalt plants, but some of the plants were owned by the same companies. This administrative regulation applied to all asphalt plants in Kentucky unless the plant chose to obtain a Title V permit or another permit that had an established limit. This administrative regulation provided that Kentucky asphalt plants were not required to have a Title V permit if the plant did not produce more than 250,000 tons a year for a hot mix and 400,000 tons a year for a drum plant. The limits were calculated to insure that the source did not reach the major source threshold for emissions. Asphalt producers wanted the Department to promulgate this administrative regulation to enable them to avoid the Title V permitting process.

Ms. Andrews stated that this administrative regulation would assist small asphalt companies because the companies would not be required to obtain a Title V permit. She believed all asphalt companies supported this administrative regulation because this administrative regulation relieved them of onerous permitting requirements. The tonnage limit was calculated to keep the plants below the major source threshold for Title V permits.

Mr. Wiseman stated that when this administrative regulation was first promulgated, there were no asphalt plants in Kentucky that produced close to 400,000 tons a year. Most asphalt plants produced between 100,000 and 200,000 tons a year. Recently, some plants wanted to exceed the 400,000 ton limit and the Cabinet said those plants would be required to obtain a Title V permit.

This administrative regulation was amended as follows: the NE-

CESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct minor typographical errors.

401 KAR 52:100. Public, affected state, and U.S. EPA review. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct minor typographical errors.

Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary

501 KAR 6:070. Kentucky Correctional Institution for Women. Pamela Biggs, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) Section 1 was amended to: (a) comply with the format requirements of KRS 13A.2251(2); and (b) reflect the new edition date of the material incorporated by reference; (2) Policy 03-01-01 was amended to refer to statutory sanctions; and (3) Policy 03-02-01 was amended to assure protection of an employee's 5th Amendment rights during an investigation.

501 KAR 6:170. Green River Correctional Complex. In response to a question by Chairman Arnold, Ms. Biggs stated that this administrative regulation required an inmate who entered the institution with medically-required contact lenses to purchase his own supplies. When the inmate needed an upgraded prescription, the inmate would be required to receive glasses, rather than contact lenses.

This administrative regulation was amended as follows: (1) Section 1 was amended to reflect the new edition date of the material incorporated by reference; and (2) GRCC 13-11-01 was amended to: (a) clarify the policy statement relating to informed consent; (b) establish the requirements relating to an inmate's refusal of treatment or examinations and missed appointments; and (c) reference the medical director, rather than the health services manager.

Education, Arts, and Humanities Cabinet: Board of Education: Department of Education: Office of District Support Services: General Administration

702 KAR 1:150 & E. Employment of retired teachers in critical shortage areas. Kevin Noland, General Counsel, represented the Department.

In response to questions by Senator Roeding, Mr. Noland stated that a program had been established by statute to provide alternative certification for persons who were retired from the military to become teachers. This administrative regulation helped address the teacher shortage in schools and implemented House Bill 519, enacted during the 2000 Regular Session, by permitting retired teachers to teach in critical shortage areas (including math, science, and special education). Under the previous law, a retired teacher receiving retirement benefits could work up to 100 days during a fiscal year as a substitute teacher. After that limit, the teacher's retirement benefits would be reduced. Under the new law, school districts were allowed to hire retired teachers in critical shortage areas for one year contract periods. School districts could hire a limit of two retired teachers or one percent of their teaching force, whichever was greater. After September 15, the unused slots were placed in a statewide pool for use by the remaining school districts. This administrative regulation established the application process for the employment of retired teachers in critical shortage areas. The superintendent would be required to fax the form to the Department, which would respond within two days. This year, fifty-eight applications were submitted and approved. Because the statewide quota is 571 teaching slots, there were 513 positions available for school districts to use.

This administrative regulation was amended as follows: the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations.

Education Professional Standards Board

704 KAR 20:120 & E. Emergency certification and out-of-field teaching. Mary Ellen Wiederwohl, Legislative Liaison, represented the Board.

In response to questions by Chairman Arnold, Ms. Wiederwohl stated that the definition of out-of-field teaching established in this administrative regulation addressed the issues that had risen during the 2000 Regular Session. During the session, there was concern that teachers who held a previously-granted certificate to teach kindergarten

(or first grade) through eighth grade would be classified as out-of-field teachers. This administrative regulation did not classify teachers with that certificate who taught in a content area at a middle school as an out-of-field teacher. This administrative regulation defined out-of-field teachers as those people who had not been fully prepared as teachers, including those without a teaching certificate or those with an emergency, probationary, or temporary provisional certificate, who were required to undergo additional preparation for full certification. The information gathered in this administrative regulation was used for reporting purposes and did not affect a teacher's employment.

In response to questions by Senator Roeding, Ms. Wiederwohl stated that this administrative regulation equally affected vocational and regular education teachers, but would have a greater affect in special education and other shortage areas. There was not a teacher shortage in vocational education because those individuals were able to obtain certification based on their occupational experience without additional education requirements prior to their employment. Because of the shortage of gifted and talented teachers, the Board promulgated a separate administrative regulation earlier this year to establish a probationary endorsement for gifted and talented teachers. This endorsement enabled teachers to concurrently complete preparation and teach in a critical shortage area.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 3(2) were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 3(3) was amended to delete provisions that repeated existing statutes, as prohibited by KRS 13A.120(2)(e) and (f); (4) Section 4 was amended to establish the classification of out-of-field teaching, pursuant to KRS 161.1221(1), in four separate categories; and (5) Sections 2, 3, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4) and 13A.2251(2); and (b) drafting requirements of KRS 13A.222(4).

Workforce Development Cabinet: Office of Training and Reemployment

790 KAR 1:020. 1999-2004 Strategic Five (5) Year State Workforce Investment Plan. Sherry Deatruck, General Counsel, and Mike Harmon, Office of Training and ReEmployment, represented the Cabinet.

In response to questions by Senator Roeding, Ms. Deatruck stated that the state workforce investment plan was a plan the United States Department of Labor required states to submit under the Workforce Investment Act, which replaced the Job Training Partnership Act. The plan established the goals and strategies for implementing the legislation and enabled people to receive services for job training from one stop centers throughout Kentucky.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 were amended to comply with the: (a) format requirements of KRS 13A.2251(2); and (b) drafting requirements of KRS 13A.222(4).

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:015. Interlocking interest between licensees prohibited. Rick Johnstone, Commissioner, represented the Department. Dan Meyer, Wine Spirits Wholesaler Association, appeared in support of this administrative regulation.

This administrative regulation was amended as follows: Sections 1 through 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

Department of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:060 & E. Identification cards. Mona Carter, Deputy Commissioner, Vicki Horn, Staff Attorney, and Suetta Dickinson, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1

were amended to comply with the drafting requirements of KRS 13A.222(4)(j).

806 KAR 9:120 & E. Unlicensed adjusters. In response to questions by Representative Bruce, Ms. Carter stated that insurance companies were required to request an additional extension for unlicensed adjusters to work in Kentucky. The Department had difficulty controlling shysters who came into Kentucky to fraudulently sell insurance because those individuals were not associated with an insurance company and the Department might not be aware of their location. The Department's fraud unit patrolled the state and would respond to complaints regarding shysters. This administrative regulation addressed the situation where a large company, such as State Farm or Allstate, did not have enough adjusters in the state to respond to an emergency situation and requested assistance of adjusters from other states. Recent examples include the tornado and hail storms in Bullitt and Jefferson Counties and in Bowling Green. Some larger companies required additional time to process the claim. The Commissioner was authorized to grant an extension up to ninety days depending on the circumstances. If a disaster hit Kentucky, Tennessee, Indiana, and Ohio at the same time, the state would need to be more tolerant regarding the number of adjusters allowed in Kentucky and the timeframes.

Representative Bruce stated that he did not agree with this administrative regulation. Insurance companies made money from interest and if the companies were given extra time to complete their claims, some companies would simply use the extra time to delay claims to earn more interest.

Ms. Carter stated that insurance companies were required to submit a list of the adjusters and their license information for Department approval. The Department was fully aware of each adjuster that insurance companies brought into Kentucky and checked their license with their home states.

In response to questions by Chairman Arnold, Ms. Carter stated that unlicensed adjusters referred to adjusters who were licensed in another state but were not licensed in Kentucky. The unlicensed adjusters were brought into Kentucky to assist with a catastrophic problem to process citizens' claims quicker. The criminal fraud division of the Department handled fraudulent claims.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4)(j).

806 KAR 9:200 & E. Volume of insurance agent exchange of business. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 4 were amended to: (1) correct a statutory citation; and (2) comply with the drafting requirements of KRS 13A.222(4).

806 KAR 9:210 & E. Time limit for replacement of evidence of licensee financial responsibility. In response to questions by Senator Roeding, Ms. Carter stated that a solicitor was a staff person in an agent's office who was licensed but needed the agent's authorizations to act. Now, those individuals were licensed as agents.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4)(j); and (3) Section 4 was amended to change the edition date of the material incorporated by reference.

806 KAR 9:250 & E. Specialty credit insurance producer and managing employee. In response to a question by Senator Roeding, Ms. Carter stated that House Bill 595, enacted during the 2000 Regular Session, created the specialty credit producers for retail establishments to permit licensure of establishments and to authorize them to have a managing agent.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4).

Unauthorized Insurers' Prohibitions, Process and Advertising

806 KAR 11:010 & E. Industrial insured, government entity insured, and exempt commercial policyholder. In response to questions by Senator Roeding, Ms. Carter stated that this administrative regula-

tion implemented commercial deregulation legislation enacted during the 2000 Regular Session. This administrative regulation established two additional categories of persons that could register as exempt from using forms and rates filed with the Department. The three categories included industrial insureds, government entity insureds, and exempt commercial policyholders. Those entities were required to submit an application to register with the Department to use manuscript rates and to use forms and rates not approved by the Department. The Department estimated its costs of implementation at \$2500. Rate filings cost \$100.

Subcommittee staff stated that this administrative regulation did not establish fees. The rate filing fees were established in 806 KAR 4:010E, which, as an emergency administrative regulation, was deferred until the January, 2001 Subcommittee meeting.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 1, 8, 9 and 10 were amended to comply with the drafting requirements of KRS 13A.222(4).

Rates and Rating Organizations

806 KAR 13:090. Premium financing. This administrative regulation was amended as follows: the RELATES TO paragraph was amended to correct statutory citations.

806 KAR 13:150 & E. Property and casualty rate and rule filings. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 6, 8, 9, 10, 11, 12 and 13 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Insurance Contract

806 KAR 14:005 & E. Rate and form filing for life and health insurers. In response to a question by Senator Roeding, Ms. Carter stated that this administrative regulation streamlined requirements for insurers.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 1 through 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4) and 13A.2251(2); and (b) drafting requirements of KRS 13A.222(4).

806 KAR 14:006 & E. Property and casualty insurance form filings. In response to a question by Senator Roeding, Ms. Carter stated that the Department did not anticipate additional costs to the insurers from this administrative regulation, because the changes streamlined and clarified existing requirements.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 6 through 13 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Casualty Insurance Contracts

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Sections 1, 2, 3, 5, and 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Health Maintenance Organizations

806 KAR 38:020 & E. Health maintenance organization agent license. In response to a question by Representative Bruce, Ms. Carter stated that the fee for a health maintenance organization agent license was not increased by this administrative regulation. This administrative regulation defined an HMO agent.

In response to a question by Senator Roeding, Ms. Carter stated that this administrative regulation clarified that HMO agents were required to comply with Subtitle 9, which established requirements for agent licensing.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:110. Criteria for expanded local jurisdiction. Judith Walden, General Counsel, represented the Department.

In response to a question by Senator Roeding, Ms. Walden stated that Kentucky law authorized local governments to regulate certain buildings and authorized the Department to regulate other buildings. This administrative regulation established a process for expanding local jurisdiction to enable to local government to inspect buildings previously inspected by the Department. The inspection fees would be charged by the entity that inspected the building. The Department did not anticipate an increase in fees from this administrative regulation.

This administrative regulation was amended as follows: (1) Section 5 was amended to correct a statutory citation; and (2) Sections 1, 3, and 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Cabinet for Health Services: Department for Public Health: State Health Plan

902 KAR 17:040. Data reporting by health care providers. Charles Kendall, Director, Health Policy Development Branch, Department of Public Health, represented the Cabinet.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) Section 1 was amended to move substantive provisions from Section 1(2) to Section 2(2)(b), as required by KRS 13A.222(4)(e); and (2) Section 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department for Mental Health and Mental Retardation Services: Institutional Care

908 KAR 3:050 & E. Per diem rate pursuant to the "Patient Liability Act of 1978." Mike Littlefield, Administrative Regulation Coordinator, and Pam Aldridge, Division of Administration and Financial Management, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to delete provisions that established the all-inclusive per diem rate for Eastern State Hospital because that facility is not operated by the Cabinet; (4) Section 2 was amended to: (a) clarify that the rates established in this administrative regulation applied to facilities operated by the cabinet; and (b) increase the per diem rate for Oakwood from \$205 to \$243; and (5) Section 3 was amended to conform.

Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: Child Welfare

922 KAR 1:360 & E. Private child care placements, levels of care and payment. Janice Kline, Assistant Director, and Karen Doyle, Director's Staff, represented the Cabinet. Bart Baldwin, Children's Alliance, appeared in support of this administrative regulation.

In response to questions by Senator Roeding, Ms. Kline stated that this administrative regulation increased the reimbursement rates for private child care to reflect actual costs. The rates were comparable between those paid for agency care and for private care.

This administrative regulation was amended as follows: (1) the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) a new Section 2 was created to: (a) reflect the statutory requirement to provide incentives for successful placements; and (b) describe the calculations upon which payments will be made.

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Board of Veterinary Examiners

201 KAR 16:100. Examination. Nancy Black, Director, Division of Occupations and Professions, and Scott Porter, Assistant Attorney General, represented the Board.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality:

Air Quality - General Administrative Procedures

401 KAR 50:071. Repeal of 401 KAR 50:030, 401 KAR 50:031, 401 KAR 50:032, 401 KAR 50:033, 401 KAR 50:034, 401 KAR 50:035, and 401 KAR 50:072. Diana Andrews, Assistant Director, and Hank Wiseman represented the Cabinet.

Education, Arts, and Humanities Cabinet: Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction

704 KAR 3:490 & E. Teachers' Professional Growth Fund. Kevin Noland, General Counsel, represented the Department.

Health and Physical Education Programs

704 KAR 4:020 & E. School health services.

Department of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:006 & E. Repeal of 806 KAR 9:005, 806 KAR 9:100, 806 KAR 9:150, 806 KAR 9:170, 806 KAR 9:180. Mona Carter, Deputy Commissioner, Vicky Horn, Staff Attorney, and Suetta Dickinson, Staff Attorney, represented the Department.

In response to questions by Representative Bruce, Ms. Carter stated that this administrative regulation repealed these five administrative regulations because their topics were now addressed in other administrative regulations.

Department of Housing, Buildings and Construction: Division of Plumbing

815 KAR 20:020. Parts or materials list. Judith Walden, General Counsel, represented the Department.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

Kentucky Higher Education Assistance Authority: Division of Student Services: Early Childhood Development Scholarship Program

11 KAR 16:030. Early Childhood Development Scholarship Program overawards and refunds.

11 KAR 16:040. Early Childhood Development Scholarship Program recordkeeping requirements.

11 KAR 16:050. Early Childhood Development Scholarship Program costs.

Revenue Cabinet: Department of Law: Division of Tax Policy: Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:140E. Telephonic and telegraphic communications and services.

Selective Excise Tax; Motor Vehicle Usage

103 KAR 44:060. Motor vehicle usage tax valuation.

Board of Medical Licensure

201 KAR 9:021E. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

Board of Certification for Professional Counselors

201 KAR 36:020. Fees - renewal date.

201 KAR 36:070. Education requirements.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:111E. Deer and turkey hunting on federal areas.

301 KAR 2:178E. Deer hunting on wildlife management areas.

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

301 KAR 2:226E. Youth waterfowl hunting season.

Hunting and Fishing

301 KAR 3:100E. Special commission permits.

Licensing

301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses.

Cabinet For Economic Development: Department of Financial Incentives: Tax Incentives Division: Kentucky Economic Opportunity Zone Program

307 KAR 7:010. Definitions. Ruth Thompson and Emily Burks, Attorney, represented the Department.

In response to questions by Representative Bruce, Ms. Thompson stated that this administrative regulation established the Kentucky Economic Opportunity Zone program which allowed manufacturing companies and service and technology companies to receive credit against their Kentucky income tax and to assess job development assessment fees if the local government agreed. The program mirrored other economic development programs currently in place. The Department established economic opportunity zones in inner city areas of nine counties (Campbell, Christian, Daviess, Fayette, Henderson, Jefferson, Kenton, Madison, McCracken and Warren Counties). Additionally, the sixty-two counties that had been approved to receive credits under the Kentucky Rural Economic Development Act were eligible for the program. While the program did not apply to retail centers (such as a Walmart store), the program could apply to a distribution center, which would receive the same credits. The Kentucky Economic Development Finance Authority approved all projects in the program.

In response to questions by Senator Roeding, Ms. Thompson stated that the counties that were picked were contained census tracts that met the three criteria established in the statute, including a minimum poverty rate of 150 percent of the US poverty rate, an unemployment rate greater than the overall Kentucky rate, and a minimum population density of 200 percent of the average Kentucky census tract. Each county had a certain number of tracts eligible for the program.

Ms. Burke stated that the identification of the nine counties was based on a preliminary determination the Cabinet made during the 2000 Regular Session and the eligible counties could change. The qualified zones and areas were based on census tract criteria relating to population density, unemployment rates and the area's general poverty. The program was designed to assist overpopulated, impoverished areas develop an economic base to benefit the citizens of the zone, county, and state.

Senator Roeding stated that the economic development programs concerned him because the programs differentiated between counties. Because businesses moving to Kentucky naturally would relocate to areas with the economic development incentives, the incentives should be offered to all counties.

Representative Bruce stated that he wanted to study this administrative regulation and the program an additional month and requested that this administrative regulation be deferred.

Ms. Thompson stated that the Department would agree to his request to defer consideration of this administrative regulation.

In response to a request by Representative Bruce, Ms. Thompson stated that she would provide additional information regarding the program and this administrative regulation to the Subcommittee members.

Without objection, this administrative regulation was deferred.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:110E. Workers' compensation managed health care plans.

803 KAR 25:190E. Utilization review and medical bill audit.

Department of Insurance: Fees and Taxes

806 KAR 4:010E. Fees of the Department of Insurance.

Agents, Consultants, Solicitors and Adjusters

806 KAR 9:001E. Prelicensing courses of studies; instructors.

806 KAR 9:070E. Examinations.

806 KAR 9:220E. Continuing education.

806 KAR 9:260E. Rental vehicle agent.

806 KAR 9:280E. Business entity election.

806 KAR 9:300E. Current licensees in good standing to receive equivalent license.

Health Insurance Contracts

806 KAR 17:180E. Standard health benefit plan and comparison format.

806 KAR 17:220E. Approval criteria and requirements for reentry

into the Kentucky health insurance market.

806 KAR 17:230E. Requirements regarding medical director's signature on health care benefit denials.

806 KAR 17:260E. Conversion policy minimum benefits.

806 KAR 17:280E. Registration, utilization review, and internal appeal.

806 KAR 17:290E. Independent external review program.

806 KAR 17:300E. Provider agreement filing requirements.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:009E. Jockeys and apprentices.

810 KAR 1:026E. Racing associations.

810 KAR 1:027E. Entries, subscriptions, and declarations.

810 KAR 1:028E. Disciplinary measures.

Harness Racing

811 KAR 1:075E. Racing and track rules.

Cabinet for Health Services: Certificate of Need

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

Office of Administrative Services: Vital Statistics

901 KAR 5:050E. Fees for searches, certified copies of certificates and records.

Maternal and Child Health

902 KAR 4:085E. Newborn Hearing Screening Equipment Grant Award.

Sanitation

902 KAR 10:060E. On-site sewage disposal application fee.

902 KAR 10:121E. Inspection fees for public swimming and bathing facilities.

Health Services and Facilities

902 KAR 20:008E. License procedures and fee schedule.

902 KAR 20:066E. Operation and services; adult day health care programs.

Food and Cosmetics

902 KAR 45:006E. Kentucky bed and breakfast.

902 KAR 45:110E. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions.

902 KAR 45:120E. Inspection fees; permit fees; hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies.

Department for Medicaid Services: Medicaid Services

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

907 KAR 1:019E. Pharmacy services.

907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability.

907 KAR 1:155E. Payments for supports for community living services for an individual with mental retardation or a developmental disability.

907 KAR 1:170E. Payment for home and community based waiver services.

907 KAR 1:320E. Kentucky patient access and care system (KenPAC).

907 KAR 1:475E. Repeal of 907 KAR 1:470, 907 KAR 1:472 and 907 KAR 1:474.

Payment and Services

907 KAR 3:030E. Coverage and payments for IMPACT Plus services.

907 KAR 3:125E. Chiropractic services and reimbursement.

OTHER BUSINESS:

Cabinet for Health Services: Department for Public Health: State Health Plan

902 KAR 17:041. State Health Plan for facilities and services.

Subcommittee staff stated that this administrative regulation was reviewed and amended at the November 14, 2000, Subcommittee meeting, and would become effective on December 21, 2000. At that meeting, Subcommittee members requested that interested parties appear at the next Subcommittee meeting to discuss the effects of the amendment made at that meeting. However, until this administrative regulation took effect, the Subcommittee would not be authorized to review the administrative regulation. Thus, the discussion regarding

VOLUME 27, NUMBER 7 – JANUARY 1, 2001

this administrative regulation would be deferred until the January, 2001, Subcommittee meeting.

The Subcommittee adjourned at 11:45 a.m. until January 9, 2001, at 10 a.m. in Room 149 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**EDUCATION ASSESSMENT AND
ACCOUNTABILITY REVIEW SUBCOMMITTEE
Meeting of November 17, 2000**

The Education Assessment and Accountability Review Subcommittee met on Friday, November 17, 2000, and submits this report:

The Subcommittee, with the agency's approval, determined that 703 KAR 5:140 should be deferred until the next regular meeting for substantive changes that were outlined in the staff review.

On a motion by Representative Frank Rasche and a second by Representative Mark Treesch, the subcommittee deferred the administrative regulation by voice vote.

**SPECIAL SUBCOMMITTEE ON ENERGY
Meeting of December 7, 2000**

The following administrative regulations were available for consideration by the Special Subcommittee on Energy during its meeting of December 7, 2000, having been referred to the Committee on June 15, 2000 (for the regs in Title 202) and November 21, 2000 (for 807 KAR 5:063), pursuant to KRS 13A.290(6):

202 KAR 6:010
202 KAR 6:020
202 KAR 6:030
202 KAR 6:050
202 KAR 6:060
807 KAR 5:063

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

202 KAR 6:020
202 KAR 6:030
202 KAR 6:050
202 KAR 6:060

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 7, 2000 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates G - 2

The Locator Index lists all administrative regulations published in VOLUME 27 of the Administrative Register from July, 2000 through June, 2001. 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 26 are those administrative regulations that were originally published in Volume 26 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2000 bound Volumes were published.

KRS Index G - 14

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 27 of the Administrative Register.

Subject Index G - 24

The Subject Index is a general index of administrative regulations published in VOLUME 27 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 26 Ky.R. Page No. | Effective Date | Regulation Number | 26 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|

VOLUME 26

The administrative regulations listed under VOLUME 26 are those administrative regulations that were originally published in Volume 26 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2000 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

| | | | | | |
|----------------|------|------------|----------------|------|-----------------|
| 301 KAR 2:221E | 1639 | 2-2-2000 | 202 KAR 6:010 | 2104 | 12-7-2000 |
| Expired | | 8-18-2000 | 202 KAR 6:020 | 2105 | (See Volume 27) |
| 401 KAR 5:072E | 1642 | 2-14-2000 | 202 KAR 6:030 | 2108 | (See Volume 27) |
| Expired | | 8-18-2000 | 202 KAR 6:050 | 2109 | (See Volume 27) |
| 501 KAR 6:190E | 1919 | 4-12-2000 | 202 KAR 6:060 | 2112 | (See Volume 27) |
| Replaced | | 9-11-2000 | 301 KAR 1:130 | | |
| 501 KAR 6:200E | 1922 | 4-12-2000 | Amended | 2294 | (See Volume 27) |
| Replaced | | 9-11-2000 | 301 KAR 1:132 | | |
| 811 KAR 1:090E | 1793 | 3-15-2000 | Amended | 2295 | (See Volume 27) |
| Expired | | 9-18-2000 | 301 KAR 1:140 | | |
| 906 KAR 1:110E | 2229 | 5-10-2000 | Amended | 2296 | (See Volume 27) |
| Expired | | 11-18-2000 | 301 KAR 1:201 | | |
| 907 KAR 1:012E | 1925 | 3-23-2000 | Amended | 2012 | (See Volume 27) |
| Expired | | 10-18-2000 | 301 KAR 2:144 | | |
| 907 KAR 1:044E | 2231 | 5-5-2000 | Amended | 2298 | (See Volume 27) |
| Expired | | 11-18-2000 | 301 KAR 2:174 | | |
| 907 KAR 3:066E | 2236 | 4-17-2000 | Amended | 2299 | (See Volume 27) |
| Replaced | | 10-16-2000 | 301 KAR 2:176 | | |
| 908 KAR 2:210E | 1931 | 4-14-2000 | Amended | 2300 | (See Volume 27) |
| Expired | | 10-18-2000 | 301 KAR 4:200 | | |
| 908 KAR 3:050E | 1938 | 3-23-2000 | Amended | 2302 | (See Volume 27) |
| Withdrawn | | 8-9-2000 | 301 KAR 5:030 | | |
| | | | Amended | 2303 | (See Volume 27) |
| | | | 401 KAR 5:072 | 2429 | (See Volume 27) |
| | | | 501 KAR 6:020 | | |
| | | | Amended | 2305 | 8-14-2000 |
| | | | 501 KAR 6:190 | | |
| | | | Amended | 2307 | (See Volume 27) |
| | | | 501 KAR 6:200 | | |
| | | | Amended | 2310 | (See Volume 27) |
| | | | 601 KAR 2:020 | | |
| | | | Amended | 2313 | (See Volume 27) |
| | | | 703 KAR 5:120 | 2120 | 8-23-2000 |
| | | | 703 KAR 5:130 | 2123 | 8-23-2000 |
| | | | 704 KAR 20:740 | 2124 | (See Volume 27) |
| | | | 707 KAR 1:011 | 2126 | 9-11-2000 |
| | | | 707 KAR 1:280 | 2127 | (See Volume 27) |
| | | | 707 KAR 1:290 | 2131 | (See Volume 27) |
| | | | 707 KAR 1:300 | 2132 | (See Volume 27) |
| | | | 707 KAR 1:310 | 2134 | (See Volume 27) |
| | | | 707 KAR 1:320 | 2135 | (See Volume 27) |
| | | | 707 KAR 1:330 | 2138 | (See Volume 27) |
| | | | 707 KAR 1:340 | 2139 | (See Volume 27) |
| | | | 707 KAR 1:350 | 2143 | (See Volume 27) |
| | | | 707 KAR 1:360 | 2144 | (See Volume 27) |
| | | | 707 KAR 1:370 | 2146 | (See Volume 27) |
| | | | 707 KAR 1:380 | 2148 | (See Volume 27) |
| | | | 780 KAR 1:010 | | |
| | | | Amended | 2316 | (See Volume 27) |
| | | | 780 KAR 2:010 | | |
| | | | Amended | 2317 | (See Volume 27) |
| | | | 780 KAR 2:011 | 2432 | (See Volume 27) |
| | | | 780 KAR 2:030 | | |
| | | | Amended | 2318 | (See Volume 27) |
| | | | 780 KAR 2:040 | | |
| | | | Amended | 2319 | (See Volume 27) |
| | | | 780 KAR 2:060 | | |
| | | | Amended | 2320 | (See Volume 27) |
| | | | 780 KAR 2:110 | | |
| | | | Amended | 2321 | (See Volume 27) |

ORDINARY ADMINISTRATIVE REGULATIONS

| | | | | | |
|----------------|------|-----------------|--|--|--|
| 11 KAR 8:030 | | | | | |
| Amended | 2281 | (See Volume 27) | | | |
| 11 KAR 12:040 | | | | | |
| Amended | 2286 | 8-14-2000 | | | |
| 11 KAR 12:050 | | | | | |
| Amended | 2287 | 8-14-2000 | | | |
| 11 KAR 12:070 | | | | | |
| Amended | 2288 | 8-14-2000 | | | |
| 11 KAR 15:060 | | | | | |
| Amended | 2290 | 8-14-2000 | | | |
| 13 KAR 2:020 | | | | | |
| Amended | 1987 | (See Volume 27) | | | |
| 201 KAR 8:390 | | | | | |
| Amended | 1691 | | | | |
| As Amended | 1942 | | | | |
| Withdrawn | | 9-6-2000 | | | |
| 201 KAR 14:180 | | | | | |
| Amended | 2292 | (See Volume 27) | | | |
| 201 KAR 27:005 | | | | | |
| Amended | 2000 | (See Volume 27) | | | |
| 201 KAR 27:010 | | | | | |
| Amended | 2003 | (See Volume 27) | | | |
| 201 KAR 27:012 | | | | | |
| Amended | 2004 | (See Volume 27) | | | |
| 201 KAR 27:013 | | | | | |
| Amended | 2005 | (See Volume 27) | | | |
| 201 KAR 27:014 | 2103 | (See Volume 27) | | | |
| 201 KAR 27:015 | | | | | |
| Amended | 2007 | (See Volume 27) | | | |
| 201 KAR 27:035 | | | | | |
| Amended | 2008 | (See Volume 27) | | | |
| 201 KAR 32:030 | | | | | |
| Amended | 2293 | (See Volume 27) | | | |
| 201 KAR 32:081 | 2427 | (See Volume 27) | | | |
| 201 KAR 32:101 | 2427 | (See Volume 27) | | | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 26 Ky.R. Page No. | Effective Date | Regulation Number | 26 Ky.R. Page No. | Effective Date |
|-------------------|-------------------|-----------------|---|-------------------|-----------------|
| 780 KAR 2:140 | | | 902 KAR 13:110 | | |
| Amended | 2322 | (See Volume 27) | Amended | 2349 | (See Volume 27) |
| 780 KAR 4:010 | | | 902 KAR 13:130 | | |
| Amended | 2324 | (See Volume 27) | Repealed | 2442 | 8-14-2000 |
| 780 KAR 4:011 | 2433 | (See Volume 27) | 902 KAR 13:160 | 2437 | (See Volume 27) |
| 780 KAR 4:050 | | | 902 KAR 13:170 | 2441 | 8-14-2000 |
| Amended | 2325 | | 902 KAR 13:171 | 2442 | 8-14-2000 |
| Withdrawn | | 9-11-2000 | 902 KAR 14:070 | | |
| 780 KAR 5:011 | 2433 | (See Volume 27) | Amended | 2355 | (See Volume 27) |
| 780 KAR 7:010 | | | 902 KAR 14:080 | | |
| Amended | 2326 | (See Volume 27) | Amended | 2357 | (See Volume 27) |
| 780 KAR 7:011 | 2434 | (See Volume 27) | 902 KAR 14:090 | | |
| 780 KAR 7:020 | | | Amended | 2366 | (See Volume 27) |
| Amended | 2327 | (See Volume 27) | 902 KAR 100:010 | | |
| 780 KAR 7:040 | | | Amended | 2371 | (See Volume 27) |
| Amended | 2328 | (See Volume 27) | 902 KAR 100:036 | 2443 | 9-11-2000 |
| 780 KAR 7:060 | | | 902 KAR 100:040 | | |
| Amended | 2329 | (See Volume 27) | Amended | 2382 | (See Volume 27) |
| 780 KAR 9:011 | 2435 | (See Volume 27) | 902 KAR 100:041 | | |
| 781 KAR 1:010 | | | Amended | 2389 | (See Volume 27) |
| Amended | 2030 | (See Volume 27) | 902 KAR 100:042 | 2444 | (See Volume 27) |
| 781 KAR 1:050 | | | 902 KAR 100:045 | | |
| Amended | 2032 | (See Volume 27) | Amended | 2392 | (See Volume 27) |
| 803 KAR 2:180 | | | 902 KAR 100:058 | | |
| Amended | 2038 | (See Volume 27) | Amended | 2395 | (See Volume 27) |
| 806 KAR 6:075 | 2168 | (See Volume 27) | 902 KAR 100:070 | | |
| 806 KAR 38:090 | | | Amended | 2402 | (See Volume 27) |
| Repealed | 2436 | 8-14-2000 | 902 KAR 100:085 | | |
| 806 KAR 38:091 | 2436 | 8-14-2000 | Amended | 2416 | (See Volume 27) |
| 808 KAR 10:030 | | | 902 KAR 100:165 | | |
| Amended | 2042 | (See Volume 27) | Amended | 2418 | (See Volume 27) |
| 808 KAR 10:040 | | | 907 KAR 1:002 | | |
| Amended | 2043 | (See Volume 27) | Repealed | 1878 | 6-12-2000 |
| 902 KAR 13:010 | | | 921 KAR 2:050 | | |
| Amended | 2330 | (See Volume 27) | Amended | 2421 | 8-14-2000 |
| 902 KAR 13:020 | | | 922 KAR 1:140 | | |
| Repealed | 2442 | 8-14-2000 | Amended | 2423 | (See Volume 27) |
| 902 KAR 13:050 | | | 922 KAR 1:300 | | |
| Amended | 2332 | 8-14-2000 | Amended | 2068 | (See Volume 27) |
| 902 KAR 13:070 | | | 922 KAR 1:305 | 2181 | (See Volume 27) |
| Amended | 2339 | (See Volume 27) | 922 KAR 1:310 | | |
| 902 KAR 13:080 | | | Amended | 2080 | (See Volume 27) |
| Amended | 2343 | 8-14-2000 | 922 KAR 1:380 | 2183 | (See Volume 27) |
| 902 KAR 13:090 | | | 922 KAR 1:390 | 2184 | (See Volume 27) |
| Amended | 2346 | (See Volume 27) | *Statement of Consideration Not Filed by Deadline | | |
| | | | **Found deficient by legislative committee | | |

VOLUME 27

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|---|-------------------|----------------|-------------------|-------------------|----------------|
| EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first) | | | 105 KAR 1:290E | 345 | 7-14-2000 |
| | | | Replaced | 1447 | 12-21-2000 |
| 13 KAR 1:030E | 700 | 8-15-2000 | 201 KAR 9:021E | 347 | 7-13-2000 |
| 13 KAR 2:100E | 703 | 8-15-2000 | 301 KAR 2:111E | 1178 | 9-19-2000 |
| 40 KAR 3:010E | 345 | 6-16-2000 | 301 KAR 2:178E | 1179 | 9-19-2000 |
| 103 KAR 28:140E | 54 | 6-1-2000 | 301 KAR 2:221E | 1749 | 11-22-2000 |
| Expired | | 12-18-2000 | 301 KAR 2:222E | 1750 | 11-22-2000 |
| | | | 301 KAR 2:225E | 940 | 8-30-2000 |
| | | | 301 KAR 2:226E | 1182 | 10-13-2000 |
| | | | 301 KAR 3:100E | 1183 | 9-19-2000 |
| | | | 301 KAR 5:030E | 942 | 8-30-2000 |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|------------------------------|------------------------------|---------------------------|------------------------------|------------------------------|---------------------------|
| 501 KAR 6:020E | 349 | 7-3-2000 | 806 KAR 38:020E | 412 | 7-12-2000 |
| Replaced | 834 | 11-17-2000 | 810 KAR 1:009E | 1191 | 9-21-2000 |
| 501 KAR 6:220E | 706 | 7-27-2000 | 810 KAR 1:026E | 1194 | 9-21-2000 |
| Replaced | 1456 | 12-21-2000 | 810 KAR 1:027E | 1198 | 9-21-2000 |
| 503 KAR 1:140E | 55 | 6-8-2000 | 810 KAR 1:028E | 1200 | 9-21-2000 |
| Expired | | 12-18-2000 | 811 KAR 1:075E | 1202 | 9-21-2000 |
| 702 KAR 1:150E | 707 | 8-15-2000 | 900 KAR 6:050E | 1204 | 10-6-2000 |
| 704 KAR 3:490E | 708 | 8-15-2000 | 901 KAR 5:050E | 414 | 7-12-2000 |
| 704 KAR 4:020E | 710 | 8-15-2000 | 902 KAR 4:085E | 956 | 9-12-2000 |
| 704 KAR 20:120E | 351 | 7-14-2000 | 902 KAR 4:120E | 414 | 7-13-2000 |
| 704 KAR 20:210E | 353 | 7-14-2000 | 902 KAR 10:060E | 1213 | 9-26-2000 |
| Replaced | 1077 | 12-21-2000 | 902 KAR 10:121E | 1215 | 9-20-2000 |
| 704 KAR 20:280E | 355 | 7-14-2000 | 902 KAR 20:008E | 712 | 7-20-2000 |
| Replaced | 1470 | 12-21-2000 | 902 KAR 20:066E | 1216 | 9-29-2000 |
| 704 KAR 20:500E | 357 | 7-14-2000 | 902 KAR 45:006E | 1220 | 10-6-2000 |
| Replaced | 1473 | 12-21-2000 | 902 KAR 45:110E | 1225 | 9-29-2000 |
| 704 KAR 20:706E | 359 | 7-14-2000 | 902 KAR 45:120E | 1227 | 9-26-2000 |
| Replaced | 1475 | 12-21-2000 | 907 KAR 1:013E | 416 | 7-12-2000 |
| 704 KAR 20:750E | 361 | 7-14-2000 | Withdrawn | | 10-6-2000 |
| Replaced | 1478 | 12-21-2000 | Resubmitted | 1229 | 10-6-2000 |
| 705 KAR 2:140E | 59 | 6-12-2000 | 907 KAR 1:019E | 1236 | 10-6-2000 |
| Replaced | 1260 | 11-17-2000 | 907 KAR 1:044E | 1754 | 12-15-2000 |
| 803 KAR 25:010E | 363 | 6-27-2000 | 907 KAR 1:145E | 715 | 8-11-2000 |
| Replaced | 1478 | 12-21-2000 | 907 KAR 1:155E | 423 | 7-10-2000 |
| 803 KAR 25:012E | 371 | 6-27-2000 | Withdrawn | | 8-11-2000 |
| Replaced | 1486 | 12-21-2000 | Resubmitted | 717 | 8-11-2000 |
| 803 KAR 25:070E | 373 | 6-27-2000 | 907 KAR 1:170E | 722 | 7-21-2000 |
| Withdrawn | | 9-12-2000 | 907 KAR 1:320E | 426 | 7-7-2000 |
| 803 KAR 25:101E | 375 | 6-27-2000 | 907 KAR 1:475E | 430 | 7-12-2000 |
| Replaced | 1488 | 12-21-2000 | 907 KAR 1:478E | 431 | 7-12-2000 |
| 803 KAR 25:110E | 1185 | 9-27-2000 | Withdrawn | | 11-22-2000 |
| 803 KAR 25:190E | 1188 | 9-27-2000 | 907 KAR 1:479E | 1758 | 11-22-2000 |
| 806 KAR 4:010E | 376 | 7-12-2000 | 907 KAR 1:626E | 435 | 6-30-2000 |
| Withdrawn | | 9-11-2000 | Replaced | 1492 | 12-21-2000 |
| Resubmitted | 943 | 9-11-2000 | 907 KAR 1:631E | 438 | 6-30-2000 |
| 806 KAR 9:001E | 378 | 7-12-2000 | Replaced | 1105 | 12-21-2000 |
| Withdrawn | | 9-8-2000 | 907 KAR 1:790E | 440 | 6-30-2000 |
| Resubmitted | 946 | 9-8-2000 | Replaced | 1494 | 12-21-2000 |
| 806 KAR 9:006E | 379 | 7-12-2000 | 907 KAR 3:005E | 1762 | 12-14-2000 |
| 806 KAR 9:060E | 380 | 7-12-2000 | 907 KAR 3:010E | 1764 | 11-16-2000 |
| 806 KAR 9:070E | 381 | 7-12-2000 | 907 KAR 3:030E | 726 | 7-20-2000 |
| Withdrawn | | 9-8-2000 | 907 KAR 3:120E | 441 | 6-30-2000 |
| Resubmitted | 947 | 9-8-2000 | Withdrawn | | 9-26-2000 |
| 806 KAR 9:120E | 382 | 7-12-2000 | 907 KAR 3:125E | 1243 | 9-26-2000 |
| 806 KAR 9:200E | 383 | 7-12-2000 | 907 KAR 3:140E | 442 | 7-13-2000 |
| 806 KAR 9:210E | 384 | 7-12-2000 | Replaced | 1495 | 12-21-2000 |
| 806 KAR 9:220E | 385 | 7-12-2000 | 908 KAR 3:050E | 734 | 8-9-2000 |
| Withdrawn | | 9-8-2000 | 921 KAR 1:400E | 444 | 7-14-2000 |
| Resubmitted | 949 | 9-8-2000 | Replaced | 1497 | 12-21-2000 |
| 806 KAR 9:250E | 387 | 7-12-2000 | 922 KAR 1:050E | 446 | 7-13-2000 |
| 806 KAR 9:260E | 388 | 7-12-2000 | Replaced | 1499 | 12-21-2000 |
| Withdrawn | | 9-8-2000 | 922 KAR 1:360E | 448 | 7-14-2000 |
| Resubmitted | 952 | 9-8-2000 | | | |
| 806 KAR 9:280E | 954 | 9-8-2000 | | | |
| 806 KAR 9:300E | 955 | 9-8-2000 | | | |
| 806 KAR 11:010E | 389 | 7-13-2000 | | | |
| 806 KAR 13:150E | 391 | 7-13-2000 | | | |
| 806 KAR 14:005E | 393 | 7-13-2000 | | | |
| 806 KAR 14:006E | 395 | 7-13-2000 | | | |
| 806 KAR 17:180E | 396 | 7-12-2000 | | | |
| 806 KAR 17:220E | 399 | 7-12-2000 | | | |
| 806 KAR 17:230E | 400 | 7-12-2000 | | | |
| 806 KAR 17:260E | 401 | 7-12-2000 | | | |
| 806 KAR 17:280E | 403 | 7-12-2000 | | | |
| 806 KAR 17:290E | 406 | 7-12-2000 | | | |
| 806 KAR 17:300E | 411 | 7-12-2000 | | | |

ORDINARY ADMINISTRATIVE REGULATIONS:

| | | |
|--------------|-----|-----------|
| 11 KAR 3:100 | | |
| As Amended | 453 | 8-14-2000 |
| 11 KAR 5:001 | | |
| As Amended | 467 | 8-14-2000 |
| 11 KAR 5:034 | | |
| As Amended | 468 | 8-14-2000 |
| 11 KAR 5:140 | | |
| As Amended | 469 | 8-14-2000 |
| 11 KAR 5:145 | | |
| As Amended | 469 | 8-14-2000 |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------------|----------------------|-------------------|
| 11 KAR 5:160 | | | 101 KAR 2:180 | 1383 | |
| As Amended | 470 | 8-14-2000 | As Amended | 1767 | |
| 11 KAR 8:030 | | | 102 KAR 1:220 | 1112 | |
| Amended | 555 | | 103 KAR 1:060 | | |
| As Amended | 736 | 9-11-2000 | Recodified from 103-15:070 | | 8-14-2000 |
| 11 KAR 12:010 | | | 103 KAR 5:170 | 1968 | |
| As Amended | 471 | 8-14-2000 | 103 KAR 15:070 | | |
| 11 KAR 12:030 | | | Recodified as 13-1:060 | | 8-14-2000 |
| As Amended | 472 | 8-14-2000 | 103 KAR 44:060 | | |
| 11 KAR 15:010 | | | Amended | 1043 | |
| Amended | 1036 | | 105 KAR 1:150 | | |
| As Amended | 1440 | | Amended | 1045 | |
| 11 KAR 15:020 | | | As Amended | 1441 | |
| Amended | 1037 | | 105 KAR 1:160 | | |
| As Amended | 1440 | | Amended | 1861 | |
| 11 KAR 15:030 | | | 105 KAR 1:180 | | |
| Amended | 1039 | | Amended | 1046 | |
| 11 KAR 15:050 | | | As Amended | 1442 | |
| Amended | 1040 | | 105 KAR 1:200 | | |
| 11 KAR 15:070 | | | Amended | 1048 | |
| Amended | 1042 | | As Amended | 1443 | |
| As Amended | 1441 | | 105 KAR 1:205 | | |
| 11 KAR 16:001 | 1364 | | Repealed | 1112 | 12-21-2000 |
| Amended | 1821 | | 105 KAR 1:210 | | |
| 11 KAR 16:010 | 1365 | | Amended | 1050 | |
| Amended | 1822 | | As Amended | 1444 | |
| 11 KAR 16:020 | 1367 | | 105 KAR 1:220 | | |
| Amended | 1824 | | Amended | 1052 | |
| 11 KAR 16:030 | 1369 | | As Amended | 1445 | |
| 11 KAR 16:040 | 1371 | | 105 KAR 1:230 | | |
| 11 KAR 16:050 | 1372 | | Repealed | 1112 | 12-21-2000 |
| 11 KAR 16:060 | 1373 | | 105 KAR 1:231 | 1112 | |
| Amended | 1826 | | 105 KAR 1:260 | | |
| 12 KAR 5:010 | | | Amended | 1053 | |
| Amended | 1849 | | As Amended | 1446 | |
| 12 KAR 5:020 | | | 105 KAR 1:280 | | |
| Amended | 1850 | | Repealed | 1112 | 12-21-2000 |
| 12 KAR 5:030 | | | 105 KAR 1:290 | 1113 | |
| Amended | 1853 | | As Amended | 1447 | |
| 12 KAR 5:040 | | | 105 KAR 1:300 | 1969 | |
| Amended | 1854 | | 106 KAR 1:140 | 1970 | |
| 12 KAR 5:050 | | | 106 KAR 1:150 | 1971 | |
| Amended | 1857 | | 106 KAR 1:160 | 1973 | |
| 12 KAR 5:060 | | | 106 KAR 1:170 | 1974 | |
| Amended | 1858 | | 106 KAR 1:180 | 1975 | |
| 12 KAR 5:070 | | | 106 KAR 1:190 | 1976 | |
| Amended | 1859 | | 106 KAR 1:200 | 1977 | |
| 13 KAR 1:030 | 1375 | | 106 KAR 1:210 | 1980 | |
| Amended | 1827 | | 106 KAR 1:220 | 1982 | |
| 13 KAR 2:020 | | | 106 KAR 1:230 | 1984 | |
| Amended | 149 | | 106 KAR 1:240 | 1985 | |
| As Amended | 473 | 8-14-2000 | 106 KAR 1:250 | 1987 | |
| 13 KAR 2:090 | | | 106 KAR 1:260 | 1988 | |
| Amended | 190 | | 106 KAR 1:270 | 1989 | |
| Expired | | 8-10-2000 | 106 KAR 1:280 | 1990 | |
| Amended | 1321 | | 106 KAR 1:290 | 1991 | |
| 13 KAR 2:100 | 1378 | | 106 KAR 1:300 | 1992 | |
| Amended | 1833 | | 106 KAR 1:310 | 1993 | |
| 40 KAR 3:010 | | | 106 KAR 1:320 | 1994 | |
| Amended | 1323 | | 106 KAR 1:330 | 1995 | |
| As Amended | 1766 | | 106 KAR 1:340 | 1996 | |
| 101 KAR 2:106 | 1382 | | 106 KAR 1:350 | 1997 | |
| As Amended | 1766 | | 106 KAR 1:360 | 200 | |
| 101 KAR 2:140 | | | 106 KAR 1:370 | 2001 | |
| Amended | 192 | | 106 KAR 1:380 | 2002 | |
| As Amended | 737 | 9-11-2000 | 106 KAR 1:390 | 2003 | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 201 KAR 1:050 | | | 201 KAR 13:010 | | |
| Amended | 585 | 10-16-2000 | Amended | 1526 | |
| 201 KAR 1:063 | | | 201 KAR 13:012 | 1663 | |
| Amended | 586 | 10-16-2000 | 201 KAR 13:030 | | |
| 201 KAR 1:064 | | | Amended | 1528 | |
| Amended | 587 | 10-16-2000 | 201 KAR 13:040 | | |
| 201 KAR 1:065 | | | Amended | 1528 | |
| Amended | 588 | 10-16-2000 | 201 KAR 13:050 | | |
| 201 KAR 1:069 | | | Amended | 1530 | |
| Repealed | 610 | 10-16-2000 | 201 KAR 13:055 | | |
| 201 KAR 1:069 | 610 | 10-16-2000 | Amended | 1530 | |
| 201 KAR 1:081 | | | 201 KAR 13:060 | | |
| Amended | 589 | 10-16-2000 | Amended | 1533 | |
| 201 KAR 1:160 | | | 201 KAR 14:180 | | |
| Amended | 590 | 10-16-2000 | As Amended | 959 | 10-16-2000 |
| 201 KAR 1:170 | 610 | 10-16-2000 | 201 KAR 16:100 | 1385 | |
| 201 KAR 2:205 | | | 201 KAR 20:056 | | |
| Amended | 194 | | Amended | 817 | |
| As Amended | 738 | 9-11-2000 | As Amended | 1246 | 11-17-2000 |
| 201 KAR 2:240 | 254 | | 201 KAR 20:057 | | |
| As Amended | 739 | 9-11-2000 | Amended | 819 | 11-17-2000 |
| 201 KAR 8:440 | | | 201 KAR 20:070 | | |
| Amended | 1501 | | Amended | 820 | |
| 201 KAR 9:021 | | | As Amended | 1247 | 11-17-2000 |
| Amended | 1501 | | 201 KAR 20:095 | | |
| 201 KAR 11:011 | | | Amended | 821 | |
| Amended | 1503 | | As Amended | 1248 | 11-17-2000 |
| 201 KAR 11:040 | | | 201 KAR 20:110 | | |
| Amended | 1505 | | Amended | 823 | |
| 201 KAR 11:045 | | | As Amended | 1249 | 11-17-2000 |
| Amended | 1505 | | 201 KAR 20:215 | | |
| 201 KAR 11:062 | | | Amended | 824 | |
| Amended | 1506 | | As Amended | 1448 | |
| 201 KAR 11:071 | 2005 | | 201 KAR 20:220 | | |
| 201 KAR 11:090 | | | Amended | 826 | |
| Amended | 1507 | | As Amended | 1250 | 11-17-2000 |
| 201 KAR 11:095 | | | 201 KAR 20:225 | | |
| Amended | 1508 | | Amended | 828 | |
| 201 KAR 11:105 | | | As Amended | 1251 | 11-17-2000 |
| Amended | 1508 | | 201 KAR 20:240 | | |
| 201 KAR 11:121 | | | Amended | 829 | |
| Amended | 1509 | | 201 KAR 20:260 | | |
| 201 KAR 11:135 | | | Amended | 831 | 11-17-2000 |
| Amended | 1510 | | 201 KAR 20:450 | 879 | |
| 201 KAR 11:145 | | | As Amended | 1252 | 11-17-2000 |
| Amended | 1511 | | 201 KAR 22:031 | | |
| 201 KAR 11:161 | 1660 | | Amended | 1534 | |
| 201 KAR 11:170 | | | 201 KAR 22:070 | | |
| Amended | 1512 | | Amended | 1324 | |
| 201 KAR 11:190 | | | As Amended | 1768 | |
| Amended | 1513 | | 201 KAR 22:106 | | |
| 201 KAR 11:210 | | | Amended | 1535 | |
| Amended | 1515 | | 201 KAR 22:130 | | |
| 201 KAR 11:230 | | | Amended | 1055 | |
| Amended | 1516 | | As Amended | 1449 | |
| 201 KAR 11:245 | | | 201 KAR 22:135 | | |
| Amended | 1519 | | Amended | 1055 | |
| 201 KAR 11:250 | | | 201 KAR 22:140 | 1115 | |
| Amended | 1520 | | As Amended | 1449 | |
| 201 KAR 11:350 | | | 201 KAR 23:015 | | |
| Amended | 1522 | | Amended | 195 | |
| 201 KAR 11:400 | | | As Amended | 739 | 9-11-2000 |
| Amended | 1524 | | 201 KAR 23:070 | | |
| 201 KAR 11:420 | 1660 | | Amended | 196 | |
| 201 KAR 11:430 | 1661 | | As Amended | 740 | 9-11-2000 |
| 201 KAR 11:440 | 2005 | | | | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 201 KAR 23:080 | | | 301 KAR 2:049 | | |
| Amended | 198 | | Amended | 832 | 11-17-2000 |
| As Amended | 741 | 9-11-2000 | 301 KAR 2:111 | | |
| 201 KAR 27:005 | | | Amended | 202 | |
| As Amended | 476 | 8-14-2000 | As Amended | 746 | 8-24-2000 |
| 201 KAR 27:010 | | | 301 KAR 2:144 | | |
| As Amended | 478 | 8-14-2000 | As Amended | 489 | 8-14-2000 |
| 201 KAR 27:012 | | | 301 KAR 2:172 | | |
| As Amended | 479 | 8-14-2000 | Amended | 203 | |
| 201 KAR 27:013 | | | As Amended | 746 | 8-24-2000 |
| As Amended | 480 | 8-14-2000 | 301 KAR 2:174 | | |
| 201 KAR 27:014 | | | As Amended | 489 | 8-14-2000 |
| As Amended | 482 | 8-14-2000 | 301 KAR 2:176 | | |
| 201 KAR 27:015 | | | As Amended | 490 | 8-14-2000 |
| As Amended | 483 | 8-14-2000 | 301 KAR 2:178 | | |
| 201 KAR 27:035 | | | Amended | 206 | |
| As Amended | 483 | 8-14-2000 | As Amended | 748 | 8-24-2000 |
| 201 KAR 30:010 | | | 301 KAR 2:179 | | |
| Amended | 1537 | | Amended | 211 | |
| 201 KAR 30:030 | | | As Amended | 752 | 8-24-2000 |
| Amended | 1538 | | 301 KAR 2:221 | | |
| 201 KAR 30:040 | | | Amended | 212 | |
| Amended | 1539 | | As Amended | 753 | 8-24-2000 |
| 201 KAR 30:050 | | | 301 KAR 2:240 | | |
| Amended | 1540 | | Amended | 1060 | |
| 201 KAR 30:060 | | | As Amended | 1452 | |
| Amended | 1543 | | 301 KAR 2:251 | | |
| 201 KAR 30:120 | | | Amended | 214 | |
| Amended | 1544 | | As Amended | 754 | 8-24-2000 |
| 201 KAR 32:030 | | | 301 KAR 3:026 | 255 | |
| As Amended | 743 | | As Amended | 756 | 8-24-2000 |
| Withdrawn | | 9-15-2000 | 301 KAR 4:200 | | |
| 201 KAR 32:081 | | | As Amended | 491 | 8-14-2000 |
| As Amended | 744 | 9-11-2000 | 301 KAR 5:030 | | |
| 201 KAR 32:101 | | | As Amended | 492 | 8-14-2000 |
| As Amended | 744 | 9-11-2000 | 301 KAR 6:005 | | |
| 201 KAR 36:020 | | | Amended | 216 | |
| Amended | 1326 | | As Amended | 756 | 8-24-2000 |
| 201 KAR 36:070 | 1116 | | 302 KAR 45:010 | | |
| 202 KAR 6:020 | | | Amended | 1061 | |
| As Amended | 68 | | As Amended | 1774 | |
| As Amended | 1770 | 12-7-2000 | 304 KAR 1:040 | | |
| 202 KAR 6:030 | | | Amended | 1545 | |
| As Amended | 70 | | 306 KAR 1:010 | | |
| As Amended | 1771 | 12-7-2000 | Amended | 217 | |
| 202 KAR 6:050 | | | As Amended | 757 | 9-11-2000 |
| As Amended | 70 | | 307 KAR 7:010 | 1386 | |
| As Amended | 1772 | 12-7-2000 | 307 KAR 7:020 | 1387 | |
| 202 KAR 6:060 | | | Withdrawn | | 11-22-2000 |
| As Amended | 72 | | 307 KAR 7:030 | 1388 | |
| As Amended | 1773 | 12-7-2000 | Withdrawn | | 11-22-2000 |
| 300 KAR 2:020 | 1663 | | 307 KAR 7:040 | 1389 | |
| 301 KAR 1:015 | | | Withdrawn | | 11-22-2000 |
| Amended | 200 | | 307 KAR 7:050 | 1390 | |
| As Amended | 745 | 8-24-2000 | Withdrawn | | 11-22-2000 |
| 301 KAR 1:130 | | | 307 KAR 7:060 | 1392 | |
| As Amended | 484 | 8-14-2000 | Withdrawn | | 11-22-2000 |
| 301 KAR 1:132 | | | 307 KAR 7:070 | 1393 | |
| As Amended | 484 | 8-14-2000 | Withdrawn | | 11-22-2000 |
| 301 KAR 1:140 | | | 307 KAR 7:080 | 1393 | |
| As Amended | 485 | 8-14-2000 | Withdrawn | | 11-22-2000 |
| 301 KAR 1:201 | | | 307 KAR 7:090 | 1394 | |
| As Amended | 486 | 8-14-2000 | Withdrawn | | 11-22-2000 |
| Amended | 1056 | | 401 KAR 5:072 | | |
| As Amended | 1449 | | As Amended | 757 | 8-24-2000 |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|---------------------------|----------------------|-------------------|------------------------------|----------------------|-------------------|
| 401 KAR 8:010 Amended | 1546 | | 501 KAR 6:060 Amended | 1064 | |
| 401 KAR 8:020 Amended | 1552 | | As Amended | 1454 | |
| 401 KAR 8:070 Amended | 1556 | | 501 KAR 6:070 Amended | 1066 | |
| 401 KAR 8:075 | 1665 | | As Amended | 1800 | |
| 401 KAR 8:150 Amended | 1568 | | 501 KAR 6:120 Amended | 220 | 9-11-2000 |
| 401 KAR 8:160 | 1676 | | Amended | 1067 | |
| 401 KAR 8:500 Amended | 1572 | | As Amended | 1455 | |
| 401 KAR 8:510 | 1680 | | 501 KAR 6:170 Amended | 836 | |
| 401 KAR 50:071 | 611 | | 501 KAR 6:190 As Amended | 759 | 9-11-2000 |
| 401 KAR 51:200 Amended | 1024 | 11-17-2000 | 501 KAR 6:200 As Amended | 763 | 9-11-2000 |
| 401 KAR 52:001 Amended | 612 | | 501 KAR 6:220 As Amended | 1116 | |
| As Amended | 1277 | | 501 KAR 6:999 Amended | 1456 | |
| 401 KAR 52:020 Amended | 1775 | | Amended | 222 | 9-11-2000 |
| As Amended | 617 | | Amended | 1069 | |
| 401 KAR 52:030 Amended | 1281 | | Amended | 1864 | |
| As Amended | 1779 | | 501 KAR 7:070 Amended | 1582 | |
| 401 KAR 52:040 Amended | 623 | | 501 KAR 7:130 Amended | 1865 | |
| As Amended | 1288 | | 501 KAR 10:010 Amended | 1583 | |
| 401 KAR 52:050 Amended | 628 | | 501 KAR 10:050 Amended | 1584 | |
| As Amended | 1293 | | 501 KAR 10:130 Amended | 1867 | |
| 401 KAR 52:060 Amended | 1789 | | 501 KAR 15:010 As Amended | 1117 | |
| As Amended | 633 | | 501 KAR 15:020 As Amended | 1457 | |
| 401 KAR 52:070 Amended | 1793 | | 501 KAR 15:020 As Amended | 1119 | |
| As Amended | 634 | | 503 KAR 1:140 Amended | 1458 | |
| 401 KAR 52:080 Amended | 1298 | | 503 KAR 3:030 Amended | 1070 | |
| As Amended | 1793 | | 601 KAR 1:020 Amended | 223 | 9-11-2000 |
| 401 KAR 52:090 Amended | 636 | | Amended | 1868 | |
| As Amended | 1299 | | 601 KAR 2:020 As Amended | 493 | 8-14-2000 |
| 401 KAR 52:100 Amended | 1794 | | 603 KAR 7:080 Amended | 838 | |
| As Amended | 639 | | Amended | 1309 | |
| 415 KAR 1:080 Amended | 1301 | | As Amended | 1459 | |
| Amended | 1795 | | 701 KAR 5:110 Amended | 226 | |
| 501 KAR 3:010 Amended | 642 | | As Amended | 765 | 9-11-2000 |
| 501 KAR 3:050 Amended | 1304 | | 702 KAR 1:150 As Amended | 1395 | |
| 501 KAR 3:130 Amended | 1797 | | 702 KAR 3:090 Amended | 1801 | |
| 501 KAR 6:020 Amended | 644 | | 702 KAR 3:110 Amended | 846 | 11-17-2000 |
| Amended | 1306 | 11-17-2000 | 702 KAR 4:160 Amended | 847 | 11-17-2000 |
| 501 KAR 6:030 Amended | 1798 | | As Amended | 848 | |
| 501 KAR 6:040 Amended | 834 | 9-11-2000 | 702 KAR 7:065 Amended | 1254 | 11-17-2000 |
| 501 KAR 6:050 Amended | 1580 | 10-16-2000 | 702 KAR 7:125 Amended | 1869 | |
| As Amended | 218 | | 703 KAR 5:140 | 881 | |
| | 591 | | | | |
| | 1062 | | | | |
| | 1453 | | | | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 704 KAR 3:345 | | | 707 KAR 1:120 | | |
| Amended | 1874 | | Repealed | 2126 | 9-11-2000 |
| 704 KAR 3:490 | 1396 | | 707 KAR 1:130 | | |
| 704 KAR 4:020 | | | Repealed | 2126 | 9-11-2000 |
| Amended | 1332 | | 707 KAR 1:140 | | |
| 704 KAR 20:120 | | | Repealed | 2126 | 9-11-2000 |
| Amended | 1075 | | 707 KAR 1:150 | | |
| As Amended | 1802 | | Repealed | 2126 | 9-11-2000 |
| 704 KAR 20:198 | | | 707 KAR 1:160 | | |
| Amended | 854 | | Repealed | 2126 | 9-11-2000 |
| As Amended | 1469 | | 707 KAR 1:170 | | |
| 704 KAR 20:210 | | | Repealed | 2126 | 9-11-2000 |
| Amended | 1077 | | 707 KAR 1:180 | | |
| 704 KAR 20:280 | | | Repealed | 2126 | 9-11-2000 |
| Amended | 1078 | | 707 KAR 1:190 | | |
| As Amended | 1470 | | Repealed | 2126 | 9-11-2000 |
| 704 KAR 20:410 | | | 707 KAR 1:200 | | |
| Amended | 857 | | Repealed | 2126 | 9-11-2000 |
| As Amended | 1471 | | 707 KAR 1:210 | | |
| 704 KAR 20:420 | | | Repealed | 2126 | 9-11-2000 |
| Amended | 858 | | 707 KAR 1:220 | | |
| As Amended | 1472 | | Repealed | 2126 | 9-11-2000 |
| 704 KAR 20:500 | | | 707 KAR 1:230 | | |
| Amended | 1080 | | Repealed | 2126 | 9-11-2000 |
| As Amended | 1473 | | 707 KAR 1:240 | | |
| 704 KAR 20:540 | | | Repealed | 2126 | 9-11-2000 |
| Amended | 860 | | 707 KAR 1:250 | | |
| As Amended | 1474 | | Repealed | 2126 | 9-11-2000 |
| 704 KAR 20:670 | | | 707 KAR 1:260 | | |
| Amended | 1877 | | Repealed | 2126 | 9-11-2000 |
| 704 KAR 20:706 | | | 707 KAR 1:280 | | |
| Amended | 1082 | | Amended | 153 | |
| As Amended | 1475 | | As Amended | 496 | 8-14-2000 |
| 704 KAR 20:710 | | | 707 KAR 1:290 | | |
| Amended | 862 | | As Amended | 499 | 8-14-2000 |
| As Amended | 1476 | | 707 KAR 1:300 | | |
| 704 KAR 20:740 | | | Amended | 157 | |
| As Amended | 495 | 8-14-2000 | As Amended | 500 | 8-14-2000 |
| 704 KAR 20:750 | 1120 | | 707 KAR 1:310 | | |
| As Amended | 1478 | | Amended | 158 | |
| 705 KAR 2:120 | | | As Amended | 501 | 8-14-2000 |
| Repealed | 884 | 11-17-2000 | 707 KAR 1:320 | | |
| 705 KAR 2:121 | 884 | 11-17-2000 | Amended | 160 | |
| 705 KAR 2:140 | 884 | | As Amended | 502 | 8-14-2000 |
| As Amended | 1260 | 11-17-2000 | 707 KAR 1:330 | | |
| 705 KAR 4:041 | | | Amended | 163 | |
| Amended | 864 | | As Amended | 504 | 8-14-2000 |
| As Amended | 1260 | 11-17-2000 | 707 KAR 1:340 | | |
| 705 KAR 4:051 | | | Amended | 164 | |
| Repealed | 885 | 11-17-2000 | As Amended | 765 | 9-11-2000 |
| 705 KAR 4:052 | 885 | 11-17-2000 | 707 KAR 1:350 | | |
| 705 KAR 4:231 | | | Amended | 167 | |
| Amended | 865 | | As Amended | 505 | 8-14-2000 |
| As Amended | 1261 | 11-17-2000 | 707 KAR 1:360 | | |
| 707 KAR 1:015 | | | Amended | 169 | |
| Repealed | 2126 | 9-11-2000 | As Amended | 506 | 8-14-2000 |
| 707 KAR 1:040 | | | 707 KAR 1:370 | | |
| Repealed | 2126 | 9-11-2000 | As Amended | 507 | 8-14-2000 |
| 707 KAR 1:045 | | | 707 KAR 1:380 | | |
| Repealed | 2126 | 9-11-2000 | As Amended | 508 | 8-14-2000 |
| 707 KAR 1:090 | | | 780 KAR 1:010 | | |
| Repealed | 2126 | 9-11-2000 | As Amended | 959 | 10-16-2000 |
| 707 KAR 1:100 | | | 780 KAR 2:010 | | |
| Repealed | 2126 | 9-11-2000 | As Amended | 960 | 10-16-2000 |
| 707 KAR 1:110 | | | 780 KAR 2:011 | | |
| Repealed | 2126 | 9-11-2000 | As Amended | 960 | 10-16-2000 |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|-----------------------------|----------------------|-------------------|---------------------------------|----------------------|-------------------|
| 780 KAR 2:020 Repealed | 960 | 10-16-2000 | 780 KAR 9:020 Repealed | 967 | 10-16-2000 |
| 780 KAR 2:030 As Amended | 960 | 10-16-2000 | 782 KAR 1:010 Amended | 1885 | |
| 780 KAR 2:035 Repealed | 960 | 10-16-2000 | 790 KAR 1:020 As Amended | 1398 1803 | |
| 780 KAR 2:040 As Amended | 961 | 10-16-2000 | 803 KAR 25:010 Amended | 1084 | |
| 780 KAR 2:060 As Amended | 962 | 10-16-2000 | As Amended | 1478 | 12-21-2000 |
| 780 KAR 2:090 Repealed | 960 | 10-16-2000 | 803 KAR 25:012 Amended | 1092 | |
| 780 KAR 2:100 Repealed | 960 | 10-16-2000 | As Amended | 1486 | 12-21-2000 |
| 780 KAR 2:110 As Amended | 962 | 10-16-2000 | 803 KAR 25:101 Amended | 1095 | |
| 780 KAR 2:120 Repealed | 960 | 10-16-2000 | As Amended | 1488 | 12-21-2000 |
| 780 KAR 2:140 As Amended | 963 | 10-16-2000 | 803 KAR 25:110 Amended | 1890 | |
| 780 KAR 3:035 As Amended | 259 769 | | 803 KAR 25:190 Amended | 1893 | |
| 780 KAR 3:120 Amended | 1881 | 9-11-2000 | 804 KAR 4:015 Amended | 1334 | |
| 780 KAR 3:130 Amended | 1883 | | As Amended | 1803 | |
| 780 KAR 4:010 As Amended | 964 | 10-16-2000 | 806 KAR 4:010 Amended | 1589 | |
| 780 KAR 4:011 As Amended | 965 | 10-16-2000 | 806 KAR 6:075 Amended | 170 | |
| 780 KAR 4:020 Repealed | 965 | 10-16-2000 | As Amended | 510 | 8-14-2000 |
| 780 KAR 4:040 Repealed | 965 | 10-16-2000 | 806 KAR 9:001 Amended | 1591 | |
| 780 KAR 4:050 Repealed | 965 | 10-16-2000 | 806 KAR 9:005 Repealed | 379 | 7-12-2000 |
| 780 KAR 4:060 Repealed | 965 | 10-16-2000 | 806 KAR 9:006 806 KAR 9:060 | 1399 | |
| 780 KAR 5:010 Repealed | 965 | 10-16-2000 | Amended | 1335 | |
| 780 KAR 5:011 As Amended | 965 | 10-16-2000 | As Amended | 1804 | |
| 780 KAR 5:020 Repealed | 965 | 10-16-2000 | 806 KAR 9:070 Amended | 1592 | |
| 780 KAR 5:030 Repealed | 965 | 10-16-2000 | 806 KAR 9:100 Repealed | 379 | 7-12-2000 |
| 780 KAR 5:040 Repealed | 965 | 10-16-2000 | 806 KAR 9:120 Amended | 1336 | |
| 780 KAR 5:050 Repealed | 965 | 10-16-2000 | As Amended | 1804 | |
| 780 KAR 7:010 As Amended | 965 | 10-16-2000 | 806 KAR 9:150 Repealed | 379 | 7-12-2000 |
| 780 KAR 7:011 As Amended | 966 | 10-16-2000 | 806 KAR 9:170 Repealed | 379 | 7-12-2000 |
| 780 KAR 7:020 As Amended | 966 | 10-16-2000 | 806 KAR 9:180 Repealed | 379 | 7-12-2000 |
| 780 KAR 7:030 Repealed | 966 | 10-16-2000 | 806 KAR 9:200 Amended | 1337 | |
| 780 KAR 7:032 Repealed | 966 | 10-16-2000 | As Amended | 1804 | |
| 780 KAR 7:040 As Amended | 966 | 10-16-2000 | 806 KAR 9:210 Amended | 1338 | |
| 780 KAR 7:060 As Amended | 966 | 10-16-2000 | As Amended | 1805 | |
| 780 KAR 9:011 As Amended | 967 | 10-16-2000 | 806 KAR 9:220 Amended | 1594 | |
| | | | 806 KAR 9:250 As Amended | 1400 | |
| | | | 806 KAR 9:260 806 KAR 9:280 | 1690 | |
| | | | 806 KAR 9:300 806 KAR 11:010 | 1692 1693 | |
| | | | Amended | 1340 | |
| | | | As Amended | 1806 | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 806 KAR 13:090 | | | 815 KAR 7:105 | | |
| Amended | 1341 | | Amended | 227 | |
| As Amended | 1807 | | As Amended | 773 | 9-11-2000 |
| 806 KAR 13:150 | 1402 | | 815 KAR 7:110 | 1405 | |
| As Amended | 1807 | | As Amended | 1812 | |
| 806 KAR 14:005 | | | 815 KAR 20:020 | | |
| Amended | 1342 | | Amended | 228 | 9-11-2000 |
| As Amended | 1808 | | Amended | 1348 | |
| 806 KAR 14:006 | 1404 | | 815 KAR 20:060 | | |
| As Amended | 1809 | | Amended | 1902 | |
| 806 KAR 15:040 | | | 815 KAR 20:090 | | |
| Amended | 592 | | Amended | 1905 | |
| Expired | | 10-6-2000 | 815 KAR 20:130 | | |
| 806 KAR 17:220 | | | Amended | 231 | |
| Amended | 1597 | | As Amended | 773 | 9-11-2000 |
| 806 KAR 17:230 | 1694 | | 815 KAR 20:150 | | |
| 806 KAR 17:240 | 1695 | | Amended | 234 | |
| 806 KAR 17:250 | 2007 | | As Amended | 776 | 9-11-2000 |
| 806 KAR 17:260 | 1696 | | 815 KAR 20:191 | | |
| 806 KAR 17:270 | 2008 | | Amended | 236 | |
| 806 KAR 17:280 | 1698 | | As Amended | 777 | 9-11-2000 |
| 806 KAR 17:290 | 1701 | | 815 KAR 35:015 | | |
| 806 KAR 17:300 | 1706 | | Amended | 242 | 9-11-2000 |
| 806 KAR 18:030 | | | 900 KAR 6:030 | | |
| Amended | 1896 | | Amended | 597 | |
| 806 KAR 20:010 | | | As Amended | 967 | 10-16-2000 |
| Amended | 1344 | | 900 KAR 6:050 | | |
| As Amended | 1810 | | Amended | 598 | |
| 806 KAR 20:020 | | | Amended | 1026 | |
| Amended | 1345 | | Withdrawn | | 10-6-2000 |
| Withdrawn | | 11-30-2000 | Amended | 1908 | |
| 806 KAR 38:020 | | | 901 KAR 5:050 | | |
| Amended | 1346 | | Amended | 1612 | |
| As Amended | 1811 | | 902 KAR 2:020 | | |
| 806 KAR 39:030 | | | Amended | 1099 | |
| Amended | 1498 | | As Amended | 1489 | |
| 806 KAR 49:020 | 2009 | | 902 KAR 2:060 | | |
| 806 KAR 49:030 | 2010 | | Amended | 1351 | |
| 806 KAR 49:040 | 2012 | | 902 KAR 4:085 | 2013 | |
| 807 KAR 5:063 | | | 902 KAR 4:120 | 1407 | |
| Amended | 1096 | 12-7-2000 | Amended | 1846 | |
| 808 KAR 1:150 | 260 | | 902 KAR 10:060 | | |
| As Amended | 769 | 9-11-2000 | Amended | 1917 | |
| 808 KAR 9:010 | 1707 | | 902 KAR 10:121 | | |
| 808 KAR 9:020 | 1708 | | Amended | 1918 | |
| 808 KAR 9:030 | 1709 | | 902 KAR 13:010 | | |
| 808 KAR 10:030 | | | As Amended | 514 | 8-14-2000 |
| As Amended | 770 | 9-11-2000 | 902 KAR 13:070 | | |
| 808 KAR 10:040 | | | As Amended | 515 | 8-14-2000 |
| Amended | 175 | | 902 KAR 13:090 | | |
| As Amended | 771 | 9-11-2000 | As Amended | 519 | 8-14-2000 |
| 808 KAR 10:410 | 1122 | | 902 KAR 13:110 | | |
| Amended | 1843 | | As Amended | 521 | 8-14-2000 |
| 808 KAR 12:030 | 1711 | | 902 KAR 13:160 | | |
| 810 KAR 1:009 | | | As Amended | 526 | 8-14-2000 |
| Amended | 1600 | | 902 KAR 14:070 | | |
| 810 KAR 1:026 | | | As Amended | 529 | 8-14-2000 |
| Amended | 1603 | | 902 KAR 14:080 | | |
| 810 KAR 1:027 | | | As Amended | 531 | 8-14-2000 |
| Amended | 1607 | | 902 KAR 14:090 | | |
| 810 KAR 1:028 | | | As Amended | 538 | 8-14-2000 |
| Amended | 1609 | | 902 KAR 17:040 | | |
| 811 KAR 1:075 | | | Amended | 1354 | |
| Amended | 1610 | | As Amended | 1813 | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 902 KAR 17:041 | | | 907 KAR 1:470 | | |
| Amended | 606 | | Repealed | 430 | 7-12-2000 |
| Amended | 1319 | | 907 KAR 1:472 | | |
| As Amended | 1492 | 12-21-2000 | Repealed | 430 | 7-12-2000 |
| 902 KAR 17:050 | 886 | | 907 KAR 1:474 | | |
| As Amended | 1263 | 11-17-2000 | Repealed | 430 | 7-12-2000 |
| 902 KAR 20:016 | | | 907 KAR 1:476 | | |
| Amended | 1920 | | Repealed | 261 | 9-11-2000 |
| 902 KAR 20:180 | | | 907 KAR 1:626 | | |
| Amended | 1929 | | Amended | 1102 | |
| 902 KAR 22:040 | | | As Amended | 1492 | |
| Amended | 1933 | | 907 KAR 1:631 | | |
| 902 KAR 45:006 | | | Amended | 1105 | |
| Amended | 1934 | | 907 KAR 1:636 | 1409 | |
| 902 KAR 45:110 | | | 907 KAR 1:790 | 1124 | |
| Amended | 1938 | | As Amended | 1494 | |
| 902 KAR 45:120 | | | 907 KAR 3:030 | | |
| Amended | 1940 | | Amended | 1630 | |
| 902 KAR 100:010 | | | 907 KAR 3:066 | 648 | |
| As Amended | 782 | 9-11-2000 | As Amended | 994 | 10-16-2000 |
| 902 KAR 100:035 | | | 907 KAR 3:125 | 2015 | |
| Repealed | 2443 | 9-11-2000 | 907 KAR 3:130 | 1713 | |
| 902 KAR 100:040 | | | 907 KAR 3:140 | 1126 | |
| As Amended | 793 | 9-11-2000 | As Amended | 1495 | |
| 902 KAR 100:041 | | | 908 KAR 2:070 | | |
| As Amended | 800 | 9-11-2000 | Amended | 1949 | |
| 902 KAR 100:042 | | | 908 KAR 2:210 | | |
| As Amended | 801 | 9-11-2000 | Amended | 867 | |
| 902 KAR 100:045 | | | As Amended | 1265 | 11-17-2000 |
| As Amended | 967 | 10-16-2000 | 908 KAR 3:050 | | |
| 902 KAR 100:058 | | | Amended | 1358 | |
| As Amended | 970 | 10-16-2000 | As Amended | 1816 | |
| 902 KAR 100:065 | | | 908 KAR 4:030 | 2017 | |
| Amended | 1613 | | 910 KAR 1:240 | 1127 | |
| 902 KAR 100:070 | | | As Amended | 1496 | |
| As Amended | 976 | 10-16-2000 | 921 KAR 1:380 | | |
| 902 KAR 100:085 | | | Amended | 249 | 9-11-2000 |
| As Amended | 989 | 10-16-2000 | 921 KAR 1:400 | | |
| 902 KAR 100:100 | | | Amended | 1107 | |
| Amended | 1615 | | As Amended | 1497 | |
| 902 KAR 100:165 | | | 921 KAR 1:410 | | |
| As Amended | 991 | 10-16-2000 | Amended | 1955 | |
| 906 KAR 1:110 | | | 922 KAR 1:050 | | |
| Amended | 1624 | | Amended | 1110 | |
| 907 KAR 1:012 | | | As Amended | 1499 | |
| Amended | 607 | | 922 KAR 1:130 | | |
| As Amended | 1264 | 11-17-2000 | Amended | 875 | |
| 907 KAR 1:019 | | | As Amended | 1272 | 11-17-2000 |
| Amended | 1942 | | 922 KAR 1:140 | | |
| 907 KAR 1:102 | | | Amended | 814 | |
| Amended | 245 | | As Amended | 1274 | 11-17-2000 |
| As Amended | 811 | 9-11-2000 | 922 KAR 1:300 | | |
| 907 KAR 1:104 | | | Amended | 557 | |
| Amended | 247 | | As Amended | 994 | 10-16-2000 |
| As Amended | 812 | 9-11-2000 | 922 KAR 1:305 | | |
| 907 KAR 1:170 | | | Amended | 569 | |
| Amended | 1626 | | As Amended | 1007 | 10-16-2000 |
| 907 KAR 1:200 | | | 922 KAR 1:310 | | |
| Repealed | 261 | 9-11-2000 | Amended | 571 | |
| 907 KAR 1:210 | | | As Amended | 1008 | 10-16-2000 |
| Repealed | 261 | 9-11-2000 | 922 KAR 1:330 | | |
| 907 KAR 1:406 | | | Amended | 1960 | |
| Repealed | 261 | 9-11-2000 | 922 KAR 1:350 | | |
| 907 KAR 1:407 | 261 | 9-11-2000 | Amended | 177 | |
| 907 KAR 1:408 | | | As Amended | 543 | 8-14-2000 |
| Repealed | 261 | 9-11-2000 | | | |

LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 27 Ky.R. Page No. | Effective Date | Regulation Number | 27 Ky.R. Page No. | Effective Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 922 KAR 1:360 | | | | | |
| Amended | 1359 | | | | |
| As Amended | 1817 | | | | |
| 922 KAR 1:380 | | | | | |
| Amended | 581 | | | | |
| As Amended | 1018 | 10-16-2000 | | | |
| 922 KAR 1:390 | | | | | |
| Amended | 582 | | | | |
| As Amended | 1019 | 10-16-2000 | | | |
| 922 KAR 1:400 | 649 | | | | |
| As Amended | 1021 | 10-16-2000 | | | |
| 922 KAR 1:410 | 262 | | | | |
| As Amended | 1023 | 10-16-2000 | | | |
| 922 KAR 1:420 | 2021 | | | | |
| 922 KAR 1:430 | 2022 | | | | |
| 922 KAR 2:090 | | | | | |
| Amended | 1639 | | | | |
| 922 KAR 2:100 | | | | | |
| Amended | 1642 | | | | |
| 922 KAR 2:110 | | | | | |
| Amended | 1649 | | | | |
| 922 KAR 2:120 | | | | | |
| Amended | 1653 | | | | |

*Statement of Consideration Not Filed by Deadline

**Found deficient by legislative committee

KRS SECTION

REGULATION

KRS SECTION

REGULATION

KRS INDEX

| | | | | | |
|---------------|---------|--------|---------------|---------|--------|
| Chapter 13B | 780 KAR | 3:120 | 39E.150 | 106 KAR | 1:200 |
| | 808 KAR | 9:030 | Chapter 39F | 106 KAR | 1:280 |
| | 808 KAR | 12:030 | 39F.020 | 106 KAR | 1:340 |
| | 908 KAR | 2:210 | | 106 KAR | 1:360 |
| | 908 KAR | 4:030 | 39F.030 | 106 KAR | 1:290 |
| | 922 KAR | 2:090 | 39F.040 | 106 KAR | 1:350 |
| 13B.050 | 922 KAR | 1:330 | | 106 KAR | 1:390 |
| 13B.120 | 922 KAR | 1:330 | 39F.050 | 106 KAR | 1:350 |
| 13B.140 | 922 KAR | 1:330 | | 106 KAR | 1:390 |
| 13B.150 | 922 KAR | 1:330 | 39F.070 | 106 KAR | 1:350 |
| 13B.170 | 921 KAR | 1:400 | | 106 KAR | 1:390 |
| 15.330 | 503 KAR | 1:140 | 39F.100 | 106 KAR | 1:140 |
| 15.340 | 503 KAR | 3:030 | | 106 KAR | 1:340 |
| 16.505-16.652 | 105 KAR | 1:210 | | 106 KAR | 1:360 |
| | 105 KAR | 1:231 | 39F.110 | 106 KAR | 1:340 |
| 16.645 | 105 KAR | 1:150 | | 106 KAR | 1:360 |
| 16.576 | 105 KAR | 1:200 | 39F.120 | 106 KAR | 1:310 |
| 16.577 | 105 KAR | 1:200 | | 106 KAR | 1:320 |
| 16.578 | 105 KAR | 1:180 | | 106 KAR | 1:330 |
| 16.582 | 105 KAR | 1:231 | | 106 KAR | 1:350 |
| 16.596 | 105 KAR | 1:220 | | 106 KAR | 1:390 |
| 16.601 | 105 KAR | 1:180 | 39F.130 | 106 KAR | 1:360 |
| 16.645 | 105 KAR | 1:200 | 39F.140 | 106 KAR | 1:360 |
| 17.165 | 922 KAR | 2:090 | | 106 KAR | 1:370 |
| | 922 KAR | 2:100 | 39F.150 | 106 KAR | 1:310 |
| | 922 KAR | 2:110 | | 106 KAR | 1:320 |
| | 922 KAR | 2:120 | | 106 KAR | 1:380 |
| 17.550-17.991 | 501 KAR | 6:220 | 39F.170 | 106 KAR | 1:250 |
| 18A.025 | 101 KAR | 2:106 | 39F.180 | 106 KAR | 1:300 |
| 18A.110 | 101 KAR | 2:140 | 39F.190 | 106 KAR | 1:200 |
| | 101 KAR | 2:180 | 39F.200 | 106 KAR | 1:390 |
| 18A.203 | 101 KAR | 2:106 | 39F.210 | 106 KAR | 1:390 |
| 18A.370 | 101 KAR | 2:140 | Chapter 45A | 907 KAR | 1:790 |
| 18A.375 | 101 KAR | 2:140 | | 908 KAR | 4:030 |
| 18A.380 | 101 KAR | 2:140 | 58.200 | 815 KAR | 20:191 |
| 39.050 | 106 KAR | 1:270 | 61.315 | 501 KAR | 15:010 |
| 39A.050 | 106 KAR | 1:140 | | 501 KAR | 15:020 |
| | 106 KAR | 1:150 | 61.510-61.705 | 105 KAR | 1:210 |
| | 106 KAR | 1:160 | | 105 KAR | 1:231 |
| | 106 KAR | 1:170 | 61.546 | 105 KAR | 1:160 |
| | 106 KAR | 1:180 | 61.552 | 105 KAR | 1:150 |
| | 106 KAR | 1:190 | | 105 KAR | 1:260 |
| | 106 KAR | 1:210 | 61.590 | 105 KAR | 1:200 |
| | 106 KAR | 1:220 | 61.595 | 105 KAR | 1:200 |
| 39A.070 | 106 KAR | 1:200 | 61.600 | 105 KAR | 1:231 |
| 39B.010 | 106 KAR | 1:230 | 61.610 | 105 KAR | 1:220 |
| 39B.020 | 106 KAR | 1:200 | 61.637 | 105 KAR | 1:231 |
| | 106 KAR | 1:210 | 61.640 | 105 KAR | 1:180 |
| | 106 KAR | 1:240 | 61.702 | 105 KAR | 1:200 |
| 39B.030 | 106 KAR | 1:200 | | 105 KAR | 1:290 |
| 39B.060 | 106 KAR | 1:200 | 61.705 | 105 KAR | 1:200 |
| 39B.990 | 106 KAR | 1:230 | 61.805-61.850 | 907 KAR | 1:019 |
| 39C.010 | 106 KAR | 1:140 | 61.872-61.884 | 922 KAR | 2:110 |
| 39C.050 | 106 KAR | 1:200 | 61.874 | 201 KAR | 20:240 |
| | 106 KAR | 1:210 | | 806 KAR | 4:010 |
| | 106 KAR | 1:220 | 61.878 | 922 KAR | 1:330 |
| | 106 KAR | 1:260 | 61.970-61.992 | 902 KAR | 17:050 |
| 39C.060 | 106 KAR | 1:150 | 67A.028 | 501 KAR | 3:010 |
| 39C.070 | 106 KAR | 1:160 | | 501 KAR | 10:010 |
| | 106 KAR | 1:180 | 67A.620 | 921 KAR | 1:410 |
| | 106 KAR | 1:190 | 67B.020 | 501 KAR | 3:010 |
| 39C.080 | 106 KAR | 1:170 | | 501 KAR | 10:010 |
| 39C.110 | 106 KAR | 1:250 | 72.020 | 501 KAR | 6:050 |
| 39E.010 | 106 KAR | 1:200 | 72.025 | 501 KAR | 6:050 |
| | 106 KAR | 1:220 | 78.510-78.852 | 105 KAR | 1:210 |
| 39E.110 | 106 KAR | 1:200 | | 105 KAR | 1:231 |

KRS SECTION

REGULATION

KRS SECTION

REGULATION

78.545

105 KAR 1:150
 105 KAR 1:180
 105 KAR 1:200
 105 KAR 1:220

78.615

105 KAR 1:300

78.616

105 KAR 1:160

95.620

921 KAR 1:410

95.878

921 KAR 1:410

Chapter 96A

603 KAR 7:080

96A.010

907 KAR 3:066

96A.095

907 KAR 3:066

96A.170

907 KAR 3:066

100.324

807 KAR 5:063

100.985

807 KAR 5:063

100.987

807 KAR 5:063

132.370

103 KAR 5:160

138.450-138.470

103 KAR 44:060

148.021

304 KAR 1:040

148.029

301 KAR 2:179

150.010

301 KAR 1:015

301 KAR 2:049

301 KAR 2:172

301 KAR 2:178

301 KAR 2:221

301 KAR 2:222E

301 KAR 2:226E

150.025

301 KAR 2:111

301 KAR 2:179

301 KAR 2:221

301 KAR 2:222E

301 KAR 2:225

301 KAR 2:226E

301 KAR 2:240

301 KAR 2:251

301 KAR 3:026

150.090

301 KAR 1:015

301 KAR 5:030E

150.105

301 KAR 2:179

150.170

301 KAR 2:111

301 KAR 2:172

301 KAR 2:178

301 KAR 2:240

301 KAR 3:026

301 KAR 3:100E

301 KAR 5:030E

150.175

301 KAR 2:172

301 KAR 2:178

301 KAR 3:026

301 KAR 3:100E

301 KAR 5:030E

301 KAR 3:100E

150.177

301 KAR 2:172

150.180

301 KAR 2:178

150.195

301 KAR 5:030E

150.235

301 KAR 5:030E

150.305

301 KAR 2:221

301 KAR 2:222E

301 KAR 2:226E

150.320

301 KAR 2:225E

150.330

301 KAR 2:221

301 KAR 2:222E

301 KAR 2:225E

301 KAR 2:226E

150.340

301 KAR 2:172

301 KAR 2:178

301 KAR 2:221

301 KAR 2:222E

301 KAR 2:225E

301 KAR 2:226E

150.360

150.360-150.370

150.370

150.390

150.395

150.395-150.417

150.399

150.400

150.410

150.470

150.600

150.603

150.620

150.625

150.640

150.710

150.990

Chapter 151B

151B.020

151B.025

151B.035

151B.075

151B.100

151B.145

151B.150

151B.260

154.23

154.45-001-154.45-120

154A.130

156.029

156.070

301 KAR 2:251

301 KAR 2:172

301 KAR 2:178

301 KAR 2:179

301 KAR 2:225E

301 KAR 2:240

301 KAR 2:049

301 KAR 2:111

301 KAR 2:172

301 KAR 2:178

301 KAR 2:251

301 KAR 2:111

301 KAR 2:172

301 KAR 2:178

301 KAR 2:179

301 KAR 2:172

301 KAR 2:178

301 KAR 2:240

301 KAR 2:049

301 KAR 2:251

301 KAR 2:049

301 KAR 2:251

301 KAR 2:049

301 KAR 2:251

301 KAR 1:201

301 KAR 2:221

301 KAR 2:222E

301 KAR 2:226E

301 KAR 2:225E

301 KAR 1:015

301 KAR 2:049

301 KAR 2:225E

301 KAR 3:026

301 KAR 1:015

301 KAR 2:179

301 KAR 2:179

301 KAR 1:015

301 KAR 1:201

301 KAR 2:049

301 KAR 2:172

301 KAR 2:178

301 KAR 2:221

301 KAR 2:222E

301 KAR 2:226E

301 KAR 2:251

301 KAR 5:030E

603 KAR 7:080

790 KAR 1:020

705 KAR 4:041

705 KAR 4:231

780 KAR 7:010

780 KAR 7:020

780 KAR 7:040

780 KAR 7:060

780 KAR 3:035

780 KAR 3:120

780 KAR 3:130

780 KAR 3:035

780 KAR 1:010

780 KAR 1:010

780 KAR 1:010

790 KAR 1:020

307 KAR 7:010

306 KAR 1:010

13 KAR 2:090

705 KAR 4:041

705 KAR 4:052

705 KAR 4:231

13 KAR 2:090

KRS SECTION

REGULATION

KRS SECTION

REGULATION

156.106 702 KAR 7:065
 156.160 705 KAR 4:052
 702 KAR 1:150
 702 KAR 3:110
 702 KAR 4:020
 702 KAR 4:160
 156.420 702 KAR 4:160
 156.551 704 KAR 3:490
 156.553 704 KAR 3:490
 156.557 704 KAR 3:345
 156.670 701 KAR 5:110
 Chapter 157 603 KAR 7:080
 157.060 702 KAR 3:110
 157.250 704 KAR 20:198
 157.320 702 KAR 7:125
 157.350 702 KAR 7:125
 157.360 702 KAR 7:125
 157.390 704 KAR 20:120
 157.395 704 KAR 20:750
 157.650 701 KAR 5:110
 157.655 701 KAR 5:110
 157.660 701 KAR 5:110
 157.665 701 KAR 5:110
 158.030 702 KAR 7:125
 158.035 902 KAR 2:060
 158.060 702 KAR 7:125
 158.070 702 KAR 7:125
 158.100 702 KAR 7:125
 158.150 780 KAR 2:060
 158.240 702 KAR 7:125
 158.6451 704 KAR 20:670
 158.6453 703 KAR 5:140
 159.010 702 KAR 7:125
 159.030 702 KAR 7:125
 159.035 702 KAR 7:125
 159.080 704 KAR 20:540
 159.140 702 KAR 7:125
 922 KAR 1:330
 159.170 702 KAR 7:125
 160.160 701 KAR 5:110
 702 KAR 4:160
 702 KAR 3:090
 704 KAR 20:120
 704 KAR 20:198
 704 KAR 20:210
 704 KAR 20:280
 704 KAR 20:410
 704 KAR 20:420
 704 KAR 20:500
 704 KAR 20:540
 704 KAR 20:670
 704 KAR 20:706
 704 KAR 20:710
 704 KAR 20:710
 704 KAR 20:120
 704 KAR 20:198
 704 KAR 20:210
 704 KAR 20:280
 704 KAR 20:410
 704 KAR 20:420
 161.030 704 KAR 20:120
 704 KAR 20:198
 704 KAR 20:210
 704 KAR 20:280
 704 KAR 20:410
 704 KAR 20:420

704 KAR 20:500
 704 KAR 20:540
 704 KAR 20:670
 704 KAR 20:706
 704 KAR 20:710
 704 KAR 20:706
 704 KAR 20:280
 704 KAR 20:500
 704 KAR 20:120
 704 KAR 20:210
 704 KAR 20:120
 704 KAR 20:120
 704 KAR 20:750
 704 KAR 20:750
 704 KAR 20:750
 704 KAR 20:750
 702 KAR 7:125
 102 KAR 1:220
 702 KAR 1:150
 921 KAR 1:410
 702 KAR 4:160
 702 KAR 4:160
 702 KAR 4:160
 603 KAR 7:080
 782 KAR 1:010
 11 KAR 16:001
 11 KAR 16:010
 11 KAR 16:030
 11 KAR 16:040
 11 KAR 16:050
 11 KAR 16:060
 13 KAR 2:090
 11 KAR 15:010
 11 KAR 15:030
 11 KAR 15:070
 13 KAR 2:090
 13 KAR 2:090
 13 KAR 2:090
 13 KAR 2:090
 13 KAR 2:090
 11 KAR 15:020
 11 KAR 15:050
 13 KAR 2:090
 13 KAR 2:090
 13 KAR 1:030
 13 KAR 2:100
 922 KAR 2:100
 922 KAR 2:120
 921 KAR 1:410
 922 KAR 2:120
 601 KAR 1:020
 601 KAR 1:020
 601 KAR 1:020
 603 KAR 7:080
 907 KAR 3:066
 907 KAR 3:066
 907 KAR 3:140
 201 KAR 20:070
 201 KAR 20:095
 201 KAR 20:110
 910 KAR 1:240
 921 KAR 1:380
 922 KAR 1:050
 603 KAR 7:080
 501 KAR 6:020
 501 KAR 6:030
 501 KAR 6:040
 501 KAR 6:050
 501 KAR 6:060
 501 KAR 6:070

| KRS SECTION | REGULATION | | KRS SECTION | REGULATION | |
|-------------------|------------|---------|-----------------|------------|--------|
| 216B.0451 | 902 KAR | 20:066E | | 401 KAR | 52:070 |
| 216B.0443 | 902 KAR | 20:066E | | 401 KAR | 52:080 |
| 216B.075 | 902 KAR | 20:016 | | 401 KAR | 52:090 |
| | 906 KAR | 1:110 | | 401 KAR | 52:100 |
| 216B.105-216B.131 | 902 KAR | 20:016 | 224.20-110 | 401 KAR | 50:071 |
| | 906 KAR | 1:110 | | 401 KAR | 51:200 |
| 216B.140-216B.250 | 902 KAR | 20:016 | | 401 KAR | 52:001 |
| 216B.175 | 902 KAR | 20:180 | | 401 KAR | 52:020 |
| 216B.330-216B.339 | 900 KAR | 6:050 | | 401 KAR | 52:030 |
| 216B.400 | 40 KAR | 3:010 | | 401 KAR | 52:040 |
| 216B.455 | 900 KAR | 6:030 | | 401 KAR | 52:050 |
| | 900 KAR | 6:050 | | 401 KAR | 52:060 |
| 216B.990 | 900 KAR | 6:030 | | 401 KAR | 52:070 |
| | 900 KAR | 6:050 | | 401 KAR | 52:080 |
| | 902 KAR | 20:008E | | 401 KAR | 52:090 |
| | 902 KAR | 20:016 | | 401 KAR | 52:100 |
| | 902 KAR | 20:066E | 224.20-120 | 401 KAR | 50:071 |
| | 902 KAR | 20:180 | | 401 KAR | 52:001 |
| 217.005-217.215 | 902 KAR | 45:006 | | 401 KAR | 52:020 |
| 217.015 | 907 KAR | 1:019 | | 401 KAR | 52:030 |
| 217.025 | 902 KAR | 45:110 | | 401 KAR | 52:040 |
| 217.035 | 902 KAR | 45:110 | | 401 KAR | 52:050 |
| 217.037 | 902 KAR | 45:110 | | 401 KAR | 52:060 |
| 217.125 | 902 KAR | 45:110 | | 401 KAR | 52:070 |
| 217.811 | 902 KAR | 45:110 | | 401 KAR | 52:080 |
| 217.822 | 907 KAR | 1:019 | | 401 KAR | 52:090 |
| 217.992 | 902 KAR | 45:006 | | 401 KAR | 52:100 |
| 219.021 | 902 KAR | 45:120 | 224.60-100 | 415 KAR | 1:080 |
| 219.041 | 902 KAR | 45:120 | 224.60-105 | 415 KAR | 1:080 |
| 219.340 | 902 KAR | 45:120 | 224.60-110 | 415 KAR | 1:080 |
| 219.350 | 902 KAR | 45:120 | 224.60-115 | 415 KAR | 1:080 |
| 222.005 | 908 KAR | 2:210 | 224.60-120 | 415 KAR | 1:080 |
| 223.160-223.220 | 401 KAR | 8:010 | 224.60-130 | 415 KAR | 1:080 |
| | 401 KAR | 8:020 | 224.60-135 | 415 KAR | 1:080 |
| Chapter 224 | 401 KAR | 8:500 | 224.60-140 | 415 KAR | 1:080 |
| 224.10-100 | 401 KAR | 8:010 | 224.60-142 | 415 KAR | 1:080 |
| | 401 KAR | 8:020 | 224.60-155 | 415 KAR | 1:080 |
| | 401 KAR | 8:070 | 224.99-010 | 415 KAR | 1:080 |
| | 401 KAR | 8:075 | 224.99-020 | 415 KAR | 1:080 |
| | 401 KAR | 8:150 | 224.99-030 | 415 KAR | 1:080 |
| | 401 KAR | 8:160 | 227.200 | 13 KAR | 1:030 |
| | 401 KAR | 8:510 | | 13 KAR | 2:100 |
| | 401 KAR | 50:071 | 227.230 | 13 KAR | 1:030 |
| | 401 KAR | 51:200 | | 13 KAR | 2:100 |
| | 401 KAR | 52:001 | 227.450 | 815 KAR | 35:015 |
| | 401 KAR | 52:020 | 227.489 | 815 KAR | 35:015 |
| | 401 KAR | 52:030 | 227.490 | 815 KAR | 35:015 |
| | 401 KAR | 52:040 | 227.4901 | 815 KAR | 35:015 |
| | 401 KAR | 52:050 | 230.210 | 810 KAR | 1:027 |
| | 401 KAR | 52:060 | | 810 KAR | 1:028 |
| | 401 KAR | 52:070 | 230.210-230.360 | 810 KAR | 1:009 |
| | 401 KAR | 52:080 | 230.215 | 810 KAR | 1:026 |
| | 401 KAR | 52:090 | 230.225 | 810 KAR | 1:026 |
| | 401 KAR | 52:100 | 230.260 | 810 KAR | 1:026 |
| 224.10-110 | 401 KAR | 8:010 | 230.630 | 811 KAR | 1:075 |
| | 401 KAR | 8:020 | 230.640 | 811 KAR | 1:075 |
| | 401 KAR | 8:070 | 235.040 | 301 KAR | 6:005 |
| | 401 KAR | 8:075 | 235.050 | 301 KAR | 6:005 |
| | 401 KAR | 8:150 | 235.070 | 301 KAR | 6:005 |
| | 401 KAR | 8:160 | 235.080 | 301 KAR | 6:005 |
| | 401 KAR | 8:510 | 235.280 | 301 KAR | 1:015 |
| 224.20-100 | 401 KAR | 50:071 | 235.990 | 301 KAR | 1:015 |
| | 401 KAR | 51:200 | 243.030 | 804 KAR | 4:015 |
| | 401 KAR | 52:001 | 243.040 | 804 KAR | 4:015 |
| | 401 KAR | 52:020 | 246.650 | 302 KAR | 45:010 |
| | 401 KAR | 52:030 | 246.660 | 302 KAR | 45:010 |
| | 401 KAR | 52:040 | 246.990 | 302 KAR | 45:010 |
| | 401 KAR | 52:050 | 260.775-260.845 | 12 KAR | 5:010 |
| | 401 KAR | 52:060 | | 12 KAR | 5:020 |

KRS SECTION

REGULATION

KRS SECTION

REGULATION

| | | |
|-------------|---------|--------|
| | 12 KAR | 5:030 |
| | 12 KAR | 5:040 |
| | 12 KAR | 5:050 |
| | 12 KAR | 5:060 |
| 260.992 | 12 KAR | 5:070 |
| | 12 KAR | 5:010 |
| | 12 KAR | 5:020 |
| | 12 KAR | 5:030 |
| | 12 KAR | 5:040 |
| | 12 KAR | 5:050 |
| | 12 KAR | 5:060 |
| | 12 KAR | 5:070 |
| Chapter 273 | 603 KAR | 7:080 |
| 278.020 | 807 KAR | 5:063 |
| 278.650 | 807 KAR | 5:063 |
| 278.665 | 807 KAR | 5:063 |
| 278.660 | 807 KAR | 5:063 |
| Chapter 281 | 603 KAR | 7:080 |
| 281.013 | 907 KAR | 3:066 |
| 281.014 | 907 KAR | 3:066 |
| 281.600 | 922 KAR | 2:120 |
| 281.605 | 907 KAR | 3:066 |
| 281.635 | 907 KAR | 3:066 |
| 287.102 | 808 KAR | 1:150 |
| 287.180 | 808 KAR | 1:150 |
| 287.185 | 808 KAR | 1:150 |
| 292.340 | 808 KAR | 10:410 |
| 292.370 | 808 KAR | 10:410 |
| 292.410 | 808 KAR | 10:410 |
| 294.012 | 808 KAR | 12:030 |
| 294.140 | 808 KAR | 12:030 |
| 294.190 | 808 KAR | 12:030 |
| 304.2-150 | 806 KAR | 4:010 |
| 304.4-010 | 806 KAR | 4:010 |
| | 806 KAR | 14:005 |
| | 806 KAR | 14:006 |
| 304.9 | 806 KAR | 9:001 |
| | 806 KAR | 9:300 |
| 304.9-030 | 806 KAR | 9:200 |
| 304.9-080 | 806 KAR | 9:200 |
| 304.9-105 | 806 KAR | 9:006 |
| | 806 KAR | 9:070 |
| | 806 KAR | 9:210 |
| 304.9-130 | 806 KAR | 9:006 |
| 304.9-160 | 806 KAR | 9:006 |
| | 806 KAR | 9:070 |
| 304.9-190 | 806 KAR | 9:070 |
| 304.9-230 | 806 KAR | 9:070 |
| 304.9-260 | 806 KAR | 4:010 |
| 304.9-270 | 806 KAR | 4:010 |
| 304.9-280 | 806 KAR | 9:006 |
| 304.9-295 | 806 KAR | 4:010 |
| | 806 KAR | 9:220 |
| 304.9-300 | 806 KAR | 9:006 |
| 304.9-320 | 806 KAR | 9:006 |
| | 806 KAR | 9:070 |
| 304.9-330 | 806 KAR | 9:210 |
| 304.9-390 | 806 KAR | 9:060 |
| 304.9-410 | 806 KAR | 9:200 |
| 304.9-430 | 806 KAR | 9:006 |
| | 806 KAR | 9:070 |
| | 806 KAR | 9:120 |
| | 806 KAR | 9:210 |
| 304.9-480 | 806 KAR | 9:250 |
| 304.9-485 | 806 KAR | 9:250 |
| 304.9-705 | 806 KAR | 9:210 |
| 304.11-020 | 806 KAR | 11:010 |
| 304.12-020 | 806 KAR | 20:010 |
| 304.13-031 | 806 KAR | 13:090 |

| | | |
|-------------------------|---------|---------|
| | 806 KAR | 13:150 |
| | 806 KAR | 11:010 |
| 304.13-051 | 806 KAR | 13:090 |
| | 806 KAR | 13:150 |
| 304.13-061 | 806 KAR | 13:150 |
| 304.13-071 | 806 KAR | 13:090 |
| 304.13-081 | 806 KAR | 13:150 |
| 304.14-120 | 806 KAR | 11:010 |
| | 806 KAR | 14:005 |
| | 806 KAR | 14:006 |
| | 806 KAR | 20:010 |
| 304.14-190 | 806 KAR | 14:005 |
| | 806 KAR | 14:006 |
| 304.14-210 | 806 KAR | 20:010 |
| 304.15-700 | 806 KAR | 9:070 |
| | 806 KAR | 9:210 |
| | 806 KAR | 9:220 |
| 304.17-042 | 806 KAR | 18:030 |
| 304.17-412 | 806 KAR | 9:280 |
| 304.17A | 806 KAR | 17:260 |
| | 907 KAR | 1:790 |
| 304.17A-080 | 806 KAR | 17:180E |
| 304.17A-095 | 806 KAR | 14:005 |
| 304.17A-138 | 806 KAR | 17:270 |
| 304.17A-200-304.17A-250 | 806 KAR | 17:180E |
| 304.17A-250 | 806 KAR | 18:030 |
| 304.17A-260 | 806 KAR | 17:220 |
| 304.17A-330 | 806 KAR | 17:240 |
| 304.17A-430 | 806 KAR | 17:180E |
| 304.17A-527 | 806 KAR | 17:300 |
| 304.17A-535 | 806 KAR | 17:250 |
| 304.17A-540 | 806 KAR | 17:230 |
| 304.17A-545 | 806 KAR | 17:230 |
| 304.17A-609 | 806 KAR | 17:260 |
| 304.17A.613 | 806 KAR | 17:260 |
| 304.17A.621-304.17A.631 | 806 KAR | 17:290 |
| 304.18-032 | 806 KAR | 18:030 |
| 304.18-045 | 806 KAR | 17:260 |
| 304.18-085 | 806 KAR | 18:030 |
| 304.18-110 | 806 KAR | 17:260 |
| 304.18-120 | 806 KAR | 17:260 |
| 304.20-160 | 806 KAR | 20:010 |
| 304.20-300-304.20-350 | 806 KAR | 20:010 |
| 304.30-090 | 806 KAR | 13:090 |
| 304.30-110 | 806 KAR | 20:010 |
| 304.32-145 | 806 KAR | 18:030 |
| 304.32-147 | 806 KAR | 17:260 |
| 304.32-180 | 806 KAR | 9:006 |
| | 806 KAR | 9:070 |
| 304.32-330 | 806 KAR | 17:260 |
| 304.38 | 907 KAR | 1:790 |
| 304.38-110 | 806 KAR | 9:006 |
| | 806 KAR | 38:020 |
| 304.38-185 | 806 KAR | 18:030 |
| 304.38-225 | 806 KAR | 17:260 |
| 304.39-060 | 806 KAR | 39:030 |
| 304.40-075 | 902 KAR | 22:040 |
| 304.43-080 | 806 KAR | 9:006 |
| 304.43-085 | 806 KAR | 18:030 |
| 309.130-309.1399 | 908 KAR | 2:210 |
| Chapter 311 | 908 KAR | 2:210 |
| 311.241-311.247 | 902 KAR | 20:016 |
| 311.271 | 201 KAR | 9:021 |
| 311.530-311.620 | 201 KAR | 9:021 |
| 311.550 | 907 KAR | 1:019 |
| 311.560 | 902 KAR | 20:016 |
| | 906 KAR | 1:110 |
| | 907 KAR | 1:019 |
| 311.990 | 201 KAR | 9:021 |

| KRS SECTION | REGULATION | KRS SECTION | REGULATION |
|-------------|----------------|-------------|----------------|
| 311.992 | 902 KAR 20:016 | 318.134 | 815 KAR 20:150 |
| Chapter 312 | 907 KAR 3:125 | 318.140 | 815 KAR 20:150 |
| 313.080 | 201 KAR 8:440 | 318.150 | 815 KAR 20:020 |
| 313.305 | 201 KAR 8:440 | | 815 KAR 20:090 |
| 314.011 | 201 KAR 20:056 | | 815 KAR 20:130 |
| | 201 KAR 20:057 | 318.160 | 815 KAR 20:150 |
| | 201 KAR 20:215 | | 815 KAR 20:191 |
| | 201 KAR 20:220 | 318.170 | 815 KAR 20:150 |
| | 906 KAR 1:110 | 318.200 | 815 KAR 20:020 |
| | 902 KAR 20:016 | | 815 KAR 20:090 |
| | 907 KAR 1:019 | Chapter 319 | 908 KAR 2:210 |
| 314.031 | 201 KAR 20:110 | 320.210 | 902 KAR 20:016 |
| 314.041 | 201 KAR 20:070 | 321.193 | 201 KAR 16:100 |
| | 201 KAR 20:095 | 322.360 | 702 KAR 4:160 |
| | 201 KAR 20:110 | 324.010 | 201 KAR 11:011 |
| | 201 KAR 20:225 | | 201 KAR 11:121 |
| | 201 KAR 20:240 | | 201 KAR 11:145 |
| | 201 KAR 20:260 | | 201 KAR 11:170 |
| 314.042 | 201 KAR 20:056 | | 201 KAR 11:210 |
| | 201 KAR 20:057 | | 201 KAR 11:230 |
| | 201 KAR 20:225 | | 201 KAR 11:440 |
| | 201 KAR 20:240 | 324.040 | 201 KAR 11:210 |
| | 902 KAR 20:016 | 324.045 | 201 KAR 11:135 |
| | 907 KAR 1:019 | | 201 KAR 11:210 |
| 314.051 | 201 KAR 20:070 | | 201 KAR 11:430 |
| | 201 KAR 20:095 | 324.046 | 201 KAR 11:011 |
| | 201 KAR 20:110 | | 201 KAR 11:135 |
| | 201 KAR 20:225 | | 201 KAR 11:170 |
| | 201 KAR 20:240 | | 201 KAR 11:210 |
| | 201 KAR 20:260 | | 201 KAR 11:230 |
| 314.071 | 201 KAR 20:225 | 324.085 | 201 KAR 11:230 |
| | 201 KAR 20:240 | 324.090 | 201 KAR 11:230 |
| 314.073 | 201 KAR 20:220 | 324.111 | 201 KAR 11:011 |
| | 201 KAR 20:225 | | 201 KAR 11:062 |
| | 201 KAR 20:240 | 324.112 | 201 KAR 11:071 |
| 314.085 | 201 KAR 20:450 | 324.117 | 201 KAR 11:011 |
| 314.091 | 201 KAR 20:056 | | 201 KAR 11:105 |
| | 201 KAR 20:225 | | 201 KAR 11:420 |
| | 201 KAR 20:450 | 324.150 | 201 KAR 11:190 |
| 314.101 | 201 KAR 20:110 | 324.151 | 201 KAR 11:190 |
| 314.111 | 201 KAR 20:260 | 324.160 | 201 KAR 11:011 |
| 314.131 | 201 KAR 20:220 | | 201 KAR 11:040 |
| | 201 KAR 20:260 | | 201 KAR 11:045 |
| 314.142 | 40 KAR 3:010 | | 201 KAR 11:062 |
| | 201 KAR 20:240 | | 201 KAR 11:090 |
| 314.161 | 201 KAR 20:056 | | 201 KAR 11:095 |
| | 201 KAR 20:240 | | 201 KAR 11:105 |
| 314.171 | 201 KAR 20:450 | | 201 KAR 11:121 |
| 314.193 | 201 KAR 20:057 | | 201 KAR 11:135 |
| 314.991 | 201 KAR 20:215 | | 201 KAR 11:145 |
| 315.020 | 201 KAR 2:205 | | 201 KAR 11:161 |
| 315.035 | 201 KAR 2:240 | | 201 KAR 11:190 |
| 315.0351 | 201 KAR 2:205 | | 201 KAR 11:245 |
| 315.191 | 201 KAR 2:205 | | 201 KAR 11:250 |
| 315.300 | 201 KAR 2:205 | | 201 KAR 11:400 |
| | 907 KAR 1:019 | 324.170 | 201 KAR 11:161 |
| Chapter 318 | 815 KAR 20:060 | | 201 KAR 11:190 |
| 318.010 | 815 KAR 20:020 | 324.190 | 201 KAR 11:161 |
| | 815 KAR 20:090 | 324.200 | 201 KAR 11:161 |
| | 815 KAR 20:130 | | 201 KAR 11:190 |
| 318.015 | 815 KAR 20:020 | 324.281 | 201 KAR 11:071 |
| | 815 KAR 20:090 | | 201 KAR 11:161 |
| | 815 KAR 20:130 | | 201 KAR 11:190 |
| 318.090 | 815 KAR 20:150 | | 201 KAR 11:230 |
| 318.130 | 815 KAR 20:020 | 324.310 | 201 KAR 11:145 |
| | 815 KAR 20:090 | 324.360 | 201 KAR 11:062 |
| | 815 KAR 20:130 | | 201 KAR 11:350 |
| | 815 KAR 20:150 | 324.410 | 201 KAR 11:011 |
| | 815 KAR 20:191 | 324.420 | 201 KAR 11:011 |

KRS SECTION

REGULATION

KRS SECTION

REGULATION

324A.010

201 KAR 30:010
201 KAR 30:030

335.100

201 KAR 23:015
201 KAR 23:070

324A.020

201 KAR 30:060

908 KAR 2:210

324A.030

201 KAR 30:030

335.150

201 KAR 23:080

324A.035

201 KAR 30:010

335.300-335.399

908 KAR 2:210

201 KAR 30:030

335.500

201 KAR 36:070

201 KAR 30:040

335.500-335.599

908 KAR 2:210

201 KAR 30:050

335.525

201 KAR 36:070

201 KAR 30:060

335.535

201 KAR 36:020

324A.040

201 KAR 30:010

Chapter 342

803 KAR 25:110

201 KAR 30:050

803 KAR 25:190

201 KAR 30:060

342.0011

803 KAR 25:010

324A.045

201 KAR 30:030

342.020

803 KAR 25:012

201 KAR 30:060

342.035

803 KAR 25:012

324A.050

201 KAR 30:040

342.125

803 KAR 25:010

324A.065

201 KAR 30:030

342.260

803 KAR 25:012

201 KAR 30:060

803 KAR 25:010

201 KAR 30:120

803 KAR 25:012

324A.075

201 KAR 30:120

342.265

803 KAR 25:010

325.220

201 KAR 1:081

342.270

803 KAR 25:010

201 KAR 1:170

342.325

803 KAR 25:012

325.261

201 KAR 1:050

342.640

101 KAR 2:140

201 KAR 1:063

342.710

803 KAR 25:010

201 KAR 1:064

803 KAR 25:101

325.280

201 KAR 1:050

342.715

803 KAR 25:010

201 KAR 1:170

342.735

803 KAR 25:012

325.301

201 KAR 1:069

342.760

803 KAR 25:010

201 KAR 1:081

344.030

105 KAR 1:210

201 KAR 1:160

368.090

808 KAR 9:020

325.330

201 KAR 1:050

808 KAR 9:030

201 KAR 1:065

368.100

808 KAR 9:010

201 KAR 1:170

368.110

808 KAR 9:030

325.380

201 KAR 1:081

368.120

808 KAR 9:030

326.020

201 KAR 13:010

403.210-403.240

921 KAR 1:400

201 KAR 13:012

403.215

921 KAR 1:410

201 KAR 13:040

403.715-403.785

908 KAR 2:210

201 KAR 13:050

405.060

921 KAR 1:410

201 KAR 13:055

405.405

921 KAR 1:410

201 KAR 13:060

405.430

921 KAR 1:380

326.035

201 KAR 13:050

921 KAR 1:400

326.040

201 KAR 13:040

405.430-405.510

921 KAR 1:410

201 KAR 13:060

405.440

921 KAR 1:400

326.060

201 KAR 13:030

405.450

921 KAR 1:400

326.080

201 KAR 13:055

405.467

921 KAR 1:410

327.030

201 KAR 22:130

405.520

921 KAR 1:380

327.040

201 KAR 22:070

406.021

921 KAR 1:380

201 KAR 22:106

921 KAR 1:400

201 KAR 22:135

406.025

921 KAR 1:380

201 KAR 22:140

921 KAR 1:400

327.045

201 KAR 22:140

407.5101-407.5701

921 KAR 1:410

327.050

201 KAR 22:031

407.5101-407.5902

921 KAR 1:380

201 KAR 22:135

421.570

908 KAR 2:210

327.060

201 KAR 22:031

427.120

921 KAR 1:410

201 KAR 22:070

427.125

921 KAR 1:410

327.070

201 KAR 22:140

431.600

922 KAR 1:330

327.075

201 KAR 22:135

441.005

501 KAR 10:010

327.080

201 KAR 22:031

441.045

501 KAR 3:010

201 KAR 22:135

501 KAR 3:050

333.030

902 KAR 20:016

501 KAR 7:070

333.130

902 KAR 2:020

501 KAR 10:010

334A.020

704 KAR 20:500

501 KAR 10:050

334A.033

704 KAR 20:500

441.055

501 KAR 3:010

334A.035

704 KAR 20:500

501 KAR 3:050

334A.060

704 KAR 20:500

501 KAR 3:130

334A.190

704 KAR 20:500

501 KAR 7:070

335.080

201 KAR 23:015

501 KAR 7:130

201 KAR 23:070

501 KAR 10:010

908 KAR 2:210

501 KAR 10:050

335.090

201 KAR 23:015

501 KAR 10:130

| KRS SECTION | REGULATION | KRS SECTION | REGULATION |
|------------------|----------------|-------------|-----------------|
| 441.064 | 501 KAR 3:050 | 620.023 | 922 KAR 1:140 |
| | 501 KAR 10:050 | 620.027 | 922 KAR 1:140 |
| 441.075 | 501 KAR 3:050 | 620.030 | 908 KAR 2:210 |
| | 501 KAR 10:050 | | 922 KAR 1:420 |
| 441.125 | 501 KAR 3:130 | | 922 KAR 2:100 |
| | 501 KAR 7:130 | 620.040 | 922 KAR 1:420 |
| | 501 KAR 10:130 | 620.050 | 922 KAR 1:420 |
| Chapter 439 | 501 KAR 6:020 | | 922 KAR 1:430 |
| | 501 KAR 6:030 | 620.990 | 922 KAR 1:330 |
| | 501 KAR 6:040 | Chapter 645 | 603 KAR 7:080 |
| | 501 KAR 6:050 | 10 CFR | 902 KAR 100:065 |
| | 501 KAR 6:060 | | 902 KAR 100:100 |
| | 501 KAR 6:070 | 12 CFR | 201 KAR 30:040 |
| | 501 KAR 6:120 | 21 CFR | 902 KAR 100:100 |
| | 501 KAR 6:170 | 29 CFR | 105 KAR 1:210 |
| | 501 KAR 6:999 | | 902 KAR 20:016 |
| 454.220 | 921 KAR 1:400 | 34 CFR | 782 KAR 1:010 |
| 503.110 | 922 KAR 1:330 | 39 CFR | 902 KAR 100:070 |
| Chapter 506 | 908 KAR 2:210 | 40 CFR | 401 KAR 8:010 |
| Chapters 507-510 | 908 KAR 2:210 | | 401 KAR 8:020 |
| 508.100 | 922 KAR 2:090 | | 401 KAR 8:070 |
| 508.110 | 922 KAR 2:090 | | 401 KAR 8:075 |
| 508.120 | 922 KAR 2:090 | | 401 KAR 8:150 |
| Chapter 510 | 40 KAR 3:010 | | 401 KAR 8:160 |
| 510.040-510.140 | 922 KAR 2:090 | | 401 KAR 8:500 |
| 510.150 | 922 KAR 2:090 | | 401 KAR 8:510 |
| 511.020-511.040 | 908 KAR 2:210 | | 401 KAR 51:200 |
| 512.020 | 908 KAR 2:210 | | 401 KAR 52:020 |
| Chapter 515 | 908 KAR 2:210 | | 401 KAR 52:030 |
| 517.050 | 908 KAR 2:210 | | 401 KAR 52:050 |
| 529.020-529.050 | 908 KAR 2:210 | | 401 KAR 52:060 |
| | 922 KAR 2:090 | | 401 KAR 52:100 |
| 530.020 | 908 KAR 2:210 | | 415 KAR 1:080 |
| | 922 KAR 2:090 | 42 CFR | 902 KAR 20:016 |
| 530.060 | 908 KAR 2:210 | | 906 KAR 1:110 |
| 530.064 | 908 KAR 2:210 | | 907 KAR 1:019 |
| | 922 KAR 2:090 | | 907 KAR 1:145E |
| 530.065 | 908 KAR 2:210 | | 907 KAR 1:479E |
| 530.070 | 908 KAR 2:210 | | 907 KAR 1:155E |
| 531.030 | 908 KAR 2:210 | | 907 KAR 1:170 |
| 531.040 | 908 KAR 2:210 | | 907 KAR 1:626 |
| 531.300-531.370 | 908 KAR 2:210 | | 907 KAR 1:631 |
| 531.310-531.370 | 922 KAR 2:090 | | 907 KAR 1:790 |
| 532.100 | 501 KAR 3:130 | | 907 KAR 3:030 |
| | 501 KAR 7:130 | | 907 KAR 3:066 |
| | 501 KAR 10:130 | | 907 KAR 3:125 |
| 600.010 | 922 KAR 1:330 | | 907 KAR 3:130 |
| | 922 KAR 1:430 | 45 CFR | 921 KAR 1:380 |
| 600.020 | 922 KAR 1:130 | | 921 KAR 1:400 |
| | 922 KAR 1:140 | | 921 KAR 1:410 |
| | 922 KAR 1:330 | | 922 KAR 1:130 |
| | 922 KAR 1:400 | 49 CFR | 902 KAR 100:070 |
| | 922 KAR 1:420 | 50 CFR | 301 KAR 2:221 |
| | 922 KAR 1:430 | | 301 KAR 2:222E |
| | 922 KAR 2:090 | | 301 KAR 2:226E |
| | 922 KAR 2:100 | | 302 KAR 45:010 |
| 605.090 | 922 KAR 1:330 | 12 USC | 201 KAR 30:040 |
| | 922 KAR 1:360 | 15 USC | 921 KAR 1:410 |
| 605.120 | 922 KAR 1:130 | 20 USC | 11 KAR 15:010 |
| 605.130 | 922 KAR 1:330 | | 705 KAR 4:231 |
| | 922 KAR 1:430 | | 780 KAR 2:010 |
| 610.010 | 922 KAR 1:140 | | 780 KAR 4:010 |
| | 922 KAR 1:330 | | 782 KAR 1:010 |
| 610.110 | 922 KAR 1:360 | 26 USC | 105 KAR 1:150 |
| | 922 KAR 1:400 | | 105 KAR 1:231 |
| 610.125 | 922 KAR 1:140 | | 105 KAR 1:260 |
| 610.127 | 922 KAR 1:140 | | 105 KAR 1:290 |
| 615.010-615.990 | 922 KAR 1:310 | | 306 KAR 1:010 |
| 620.010-620.050 | 922 KAR 1:330 | 29 USC | 790 KAR 1:020 |

KRS SECTION

REGULATION

KRS SECTION

REGULATION

42 USC

105 KAR 1:210
 106 KAR 1:140
 106 KAR 1:150
 106 KAR 1:160
 106 KAR 1:170
 106 KAR 1:180
 106 KAR 1:190
 106 KAR 1:200
 106 KAR 1:220
 401 KAR 8:075
 401 KAR 51:200
 401 KAR 52:020
 401 KAR 52:030
 401 KAR 52:040
 401 KAR 52:050
 401 KAR 52:060
 401 KAR 52:080
 401 KAR 52:100
 415 KAR 1:080
 806 KAR 17:220
 907 KAR 1:019
 907 KAR 1:145E
 907 KAR 1:479E
 907 KAR 1:155E
 907 KAR 1:170
 907 KAR 1:626
 907 KAR 1:631
 907 KAR 1:790
 907 KAR 3:030
 907 KAR 3:066
 907 KAR 3:125
 907 KAR 3:130
 907 KAR 3:140
 910 KAR 1:240
 921 KAR 1:380
 921 KAR 1:400
 921 KAR 1:410
 922 KAR 1:050
 922 KAR 1:130
 922 KAR 1:330
 922 KAR 1:420
 603 KAR 7:080
 106 KAR 1:140
 106 KAR 1:150
 106 KAR 1:160
 106 KAR 1:170
 106 KAR 1:180
 106 KAR 1:190
 101 KAR 2:106
 705 KAR 2:121
 705 KAR 2:140E
 921 KAR 1:400E
 806 KAR 4:010
 806 KAR 4:010
 806 KAR 9:280
 790 KAR 1:020
 11 KAR 16:020
 806 KAR 4:010
 806 KAR 9:260
 806 KAR 4:010
 806 KAR 4:010
 806 KAR 49:020
 806 KAR 49:030
 806 KAR 49:040
 806 KAR 4:010
 300 KAR 2:020
 705 KAR 2:140
 900 KAR 6:050
 902 KAR 10:060

EO 98-731
 EO 2000-990

EO 2000-1104

Ky. Const. Sec. 99

Ky. Const. Sec. 152

902 KAR 10:121
 902 KAR 45:006
 902 KAR 45:110
 902 KAR 45:120
 921 KAR 1:380
 780 KAR 1:010
 780 KAR 2:010
 780 KAR 2:030
 780 KAR 2:040
 780 KAR 2:060
 780 KAR 2:110
 780 KAR 2:140
 780 KAR 3:120
 780 KAR 3:130
 780 KAR 4:010
 780 KAR 7:010
 780 KAR 7:020
 780 KAR 7:040
 780 KAR 7:060
 922 KAR 2:090
 922 KAR 2:110
 922 KAR 2:120
 501 KAR 3:010
 501 KAR 10:010
 501 KAR 3:010
 501 KAR 10:010

49 USC

50 USC

2000 GA HB 265

2000 GA HB 502

2000 Acts c. 64

2000 Acts c. 145

2000 Acts c. 194

2000 Acts c. 202

200 Acts c. 308

2000 Acts c. 380

2000 Acts c. 393

2000 Acts c. 427

2000 Acts c. 434

2000 Acts c. 472

2000 Acts c. 549

SUBJECT INDEX

ACCOUNTANCY, STATE BOARD

Certificate of experience; 201 KAR 1:063
Firm license; 201 KAR 1:081
Individual license renewal and fee; 201 KAR 1:065
License application; 201 KAR 1:050
License application under substantial equivalency standards; 201 KAR 1:170
Peer reviews; 201 KAR 1:160
Repeal of 201 KAR 1:068; 201 KAR 1:069
Teaching accounting courses, experience verification; 201 KAR 1:064

ADMINISTRATIVE SERVICES (HEALTH SERVICES)

Vital statistics; 901 KAR Chapter 5

ADULT AND TECHNICAL SERVICES

Personnel System for Certified and Equivalent Employees
Appeals and hearings; 780 KAR 3:120
Employee evaluations; 780 KAR 3:035
Employee grievances; 780 KAR 3:130

AGRICULTURAL EXPERIMENT STATION

(See also particular subject)
Milk and cream; 12 KAR Chapter 5

AGRICULTURE, DEPARTMENT OF

Ginseng; 302 KAR Chapter 45

AGING SERVICES (HEALTH SERVICES)

Certification of assisted living communities; 910 KAR 1:240

AIR QUALITY

Administrative Procedures
Repeal of various administrative regulations; 401 KAR 50:071
National Ambient Air Quality Standards; Attainment, Maintenance
Regional NOx emission requirements; 401 KAR 51:200
Permits, Registrations, Prohibitory Rules
Acid rain permits; 401 KAR 52:060
Definitions; 401 KAR 52:001
Federally-enforceable permits for nonmajor sources; 401 KAR 52:030
Permit application forms; 401 KAR 52:050
Prohibitory rule for hot mix asphalt plants; 401 KAR 52:090
Public, affected state, U.S. EPA review; 401 KAR 52:100
Registration of designated sources; 401 KAR 52:070
Regulatory limit on potential to emit; 401 KAR 52:080
State-origin permits; 401 KAR 52:040
Title V permits; 401 KAR 52:020

ALCOHOLIC BEVERAGE CONTROL

Licensing
Interlocking interest between licensees prohibited; 804 KAR 4:015

ATTORNEY GENERAL

Prosecutors Advisory Council
Payment schedule for medical examinations of victims of sexual offenses; 40 KAR 3:010

BLIND, DEPARTMENT OF

Federal Vocational Rehabilitation Program; 782 KAR 1:010

CAMPGROUNDS

(See Parks)

CERTIFICATE OF NEED (HEALTH SERVICES)

Certificate of need; 900 KAR 6:050
Expenditure minimums; 900 KAR 6:030

CHECK CASHING

(See Financial Institutions)

CHIEF STATE SCHOOL OFFICER

(See Education, Arts, and Humanities Cabinet)

CHILD SUPPORT

Child support collection, distribution; 921 KAR 1:410
Child Support Program application process; 921 KAR 1:380
Establishment, review, modification of child support, medical support orders; 921 KAR 1:400

CHILD WELFARE

Adoption assistance approval; 922 KAR 1:050
Child fatality or near fatality investigations; 922 KAR 1:420
Child protective services; 922 KAR 1:330
Child protective services in-home case planning, service delivery; 922 KAR 1:430
Family Preservation Program; 922 KAR 1:410
Kinship Care Program; 922 KAR 1:130
Private child care placements, levels of care, payment; 922 KAR 1:360
Supportive services; 922 KAR 1:400

COLLEGES, NONPUBLIC

(See Postsecondary Education)

COMMONWEALTH MERIT SCHOLARSHIP PROGRAM

(See Higher Education Assistance Program)

COMMUNICABLE DISEASES

(See Public Health)

CORRECTIONS

Death Benefit Claims
Definitions; 501 KAR 15:010
Filing, process of claims; 501 KAR 15:020
Direct Supervision for Full-service Jails
Definitions; 501 KAR 10:010
Inmate programs; services; 501 KAR 10:130
Physical plant; 501 KAR 10:050
Institution Policies and Procedures
Blackburn Correctional Complex; 501 KAR 6:120
Corrections policies, procedures; 501 KAR 6:020
Green River Correctional Complex; 501 KAR 6:170
Kentucky Correctional Institution for Women; 501 KAR 6:070
Kentucky State Penitentiary; 501 KAR 6:040
Kentucky State Reformatory; 501 KAR 6:030
Luther Luckett Correctional Complex; 501 KAR 6:050
Northpoint Training Center; 501 KAR 6:060
Secured policies and procedures; 501 KAR 6:999
Sex offender treatment; 501 KAR 6:220
Jail Standards for Full-service Facilities
Definitions; 501 KAR 3:010
Inmate programs; services; 501 KAR 3:130
Physical plant; 501 KAR 3:050
Restricted Custody Center
Inmate programs; services; 501 KAR 7:130
Safety, emergency procedures; 501 KAR 7:070

COUNSELORS (PROFESSIONAL)

Education requirements; 201 KAR 36:070
Fees, renewal date; 201 KAR 36:020

COUNCIL ON POSTSECONDARY EDUCATION

(See Postsecondary Education)

SUBJECT INDEX

CRIMINAL JUSTICE TRAINING

General Training Provisions

Training charges; 503 KAR 3:030

Kentucky Law Enforcement Council

Peace officer professional standards; 503 KAR 1:140

CRITICAL ACCESS HOSPITAL

(See Inspector General)

DAY CARE

Certification of family child care homes; 922 KAR 2:100

Child care facility health and safety standards; 922 KAR 2:120

Child care facility licensure; 922 KAR 2:090

Child care facility provider requirements; 922 KAR 2:110

DENTISTRY BOARD

Biennial fee schedule, registration; 201 KAR 8:440

DISASTER AND EMERGENCY SERVICES

(See Military Affairs)

DISTRICT SUPPORT SERVICES (EDUCATION)

Administration

Employment of retired teachers in critical shortage areas; 702 KAR 1:150

Facilities Management

Capital construction process; 702 KAR 4:160

School Administration and Finance

Depository bond, penal sum; 702 KAR 3:090

Document filing dates; 702 KAR 3:110

School Terms, Attendance, Operation

Designation of agent to manage high school interscholastic athletics; 702 KAR 7:065

Pupil attendance; 702 KAR 7:125

EARLY CHILDHOOD DEVELOPMENT SCHOLARSHIP PROGRAM

(See Higher Education Assistance Authority)

ECONOMIC DEVELOPMENT

Economic Development

Definitions; 306 KAR 1:010

Economic Opportunity Zone Program; 307 KAR Chapter 7

ECONOMIC OPPORTUNITY ZONE PROGRAM

Approval standards; 307 KAR 7:060

Decertification of qualified zone; 307 KAR 7:040

Definitions; 307 KAR 7:010

Eligibility requirements for amendment to qualified zone boundary; 307 KAR 7:030

Eligibility requirements for qualified zone; 307 KAR 7:020

Financing agreement contents; 307 KAR 7:070

Incorporation by reference; 307 KAR 7:090

Service and technology agreement contents; 307 KAR 7:080

Tax Credit Program; 307 KAR 7:050

EDUCATION

(See Education, Arts, and Humanities Cabinet)

EDUCATION, ARTS, AND HUMANITIES CABINET

Chief State School Officer's Office

Use of local monies to reduce unmet technology need; 701 KAR 5:110

District Support Services

Administration; 702 KAR Chapter 1

Facilities management; 702 KAR Chapter 4

School administration and finance; 702 KAR Chapter 3

School terms, attendance, operation; 702 KAR Chapter 7

Education Professional Standards Board; 704 KAR Chapter 20

Learning Programs Development

Health and PE programs; 704 KAR Chapter 4

Instruction; 704 KAR Chapter 3

Learning Results Services

Assessment and accountability; 703 KAR Chapter 5

Special Instructional Services

Fiscal management; 705 KAR Chapter 2

Instructional programs; 705 KAR Chapter 4

EDUCATION PROFESSIONAL STANDARDS BOARD

Admission, placement, supervision in student teaching; 704 KAR 20:706

Certificates for teachers of exceptional children-communication disorders; 704 KAR 20:500

Director of pupil personnel and assistants, professional certificate; 704 KAR 20:540

Director of special education; 704 KAR 20:198

Emergency certification, out-of-field teaching; 704 KAR 20:120

Endorsement for teachers of gifted education; 704 KAR 20:280

Instructional leadership-school principal, all grades, professional certificate; 704 KAR 20:710

School superintendent certification; 704 KAR 20:420

Substitute teachers, emergency school personnel; 704 KAR 20:210

Supervisor of instruction, grades K-12, certification; 704 KAR 20:410

Teachers' National Certification Incentive Trust Fund; 704 KAR 20:750

Teaching certificates; 704 KAR 20:670

ELECTRICAL INSPECTORS

(See Housing, Buildings and Construction)

EMPLOYEES RETIREMENT

(See Retirement)

EMPLOYEES, STATE

(See also Personnel)

Personnel

Classified; 101 KAR Chapter 2

ENTERPRISE ZONE PROGRAM

(See Economic Development)

FAMILIES AND CHILDREN

Family Support

Child support; 921 KAR 1:380

Protection and Permanency

Child welfare; 922 KAR Chapter 1

Day care; 922 KAR Chapter 2

FAMILY HEALTH CARE PROVIDERS (BOARD)

(See Public Health)

FINANCIAL INSTITUTIONS

Administration

Establishment, relocation of bank branch, offices; 808 KAR 1:150

Check Cashing

Administrative hearing process; 808 KAR 9:030

Books, records to ensure check cashers do not violate law against multiple transactions in excessive amounts by a customer; 808 KAR 9:010

Establishment of examination fees; 808 KAR 9:020

Mortgage Loan Companies, Brokers

Administrative hearing procedures; 808 KAR 12:030

Securities

Viatical settlement interests; 808 KAR 10:410

FISH AND WILDLIFE RESOURCES

Fish

Boats and motor restrictions; 301 KAR 1:015

SUBJECT INDEX

Fishing limits; 301 KAR 1:201
Game
Bobcat, special harvest season; 301 KAR 2:240
Deer hunting on wildlife management areas; 301 KAR 2:178
Deer hunting season, requirements; 301 KAR 2:172
Deer, turkey hunting on federal areas; 301 KAR 2:111
Dove, wood duck, teal, migratory game bird hunting; 301 KAR 2:225E
Hunting, trapping seasons, limits for furbearers, small game; 301 KAR 2:251
Small game, furbearer hunting on public areas; 301 KAR 2:049
State park deer hunts; 301 KAR 2:179
Waterfowl hunting requirements; 301 KAR 2:222E
Waterfowl seasons and limits; 301 KAR 2:221
Youth waterfowl hunting season; 301 KAR 2:226E
Hunting and Fishing
Access to wildlife management areas for mobility-impaired individuals; 301 KAR 3:026
Special commission permits; 301 KAR 3:100E
Licensing
Purchasing, obtaining replacement licenses; 301 KAR 5:030E
Water Patrol
Boat registration fees; 301 KAR 6:005

FOOD AND COSMETICS (HEALTH SERVICES)

(See Public Health)

GINSENG

General provisions; 302 KAR 45:010

HARNESS RACING

Racing and track rules; 811 KAR 1:075

HEALTH PLAN (STATE)

(See Public Health)

HEALTH SERVICES (CABINET)

Administrative Services
Vital statistics; 901 KAR Chapter 5
Aging services; 910 KAR Chapter 1
Certificate of need; 900 KAR Chapter 6
Inspector General's Office; 906 KAR Chapter 1
Medicaid
Medicaid services; 907 KAR Chapter 1
Mental Health, Mental Retardation Services
Institutional care; 908 KAR Chapter 3
Mental health; 908 KAR Chapter 2
Mental health, mental retardation services; 908 KAR Chapter 4
Public Health
Board of Family Health Care Providers; 902 KAR Chapter 22
Communicable diseases; 902 KAR Chapter 2
Food and cosmetics; 902 KAR Chapter 45
Health services and facilities; 902 KAR Chapter 20
Maternal and child health; 902 KAR Chapter 4
Sanitation; 902 KAR Chapter 10
State Health Plan; 902 KAR Chapter 17

HEALTH SERVICES AND FACILITIES

(See Public Health)

HIGHER EDUCATION ASSISTANCE AUTHORITY

Commonwealth Merit Scholarship Program
Definitions; 11 KAR 15:010
Disbursement; 11 KAR 15:050
Dual enrollment under consortium agreement; 11 KAR 15:030
Records and reports; 11 KAR 15:070
Student eligibility report; 11 KAR 15:020
Early Childhood Development Scholarship Program
Applicant selection process; 11 KAR 16:010

Costs; 11 KAR 16:050
Definitions; 11 KAR 16:001
Disbursement process; 11 KAR 16:020
Overawards and refunds; 11 KAR 16:030
Recordkeeping requirements; 11 KAR 16:040
System of monetary incentives; 11 KAR 16:060

HIGHWAYS

Mass Transportation
Human service transportation delivery; 603 KAR 7:080

HOUSING, BUILDINGS AND CONSTRUCTION

Electrical Inspectors
Certification of electrical inspectors; 815 KAR 35:015
Kentucky Building Code
Criteria for expanded local jurisdiction; 815 KAR 7:110
1997 Kentucky Building Code; 815 KAR 7:105
Plumbing
House sewers, storm water piping; methods of installation; 815 KAR 20:130
Inspection and tests; 815 KAR 20:150
Materials, quality and weight; 815 KAR 20:060
Minimum fixture requirements; 815 KAR 20:191
Parts or materials list; 815 KAR 20:020
Soil, waste, vent systems; 815 KAR 20:090

INSPECTOR GENERAL (HEALTH SERVICES)

Critical access hospital services; 906 KAR 1:110

INSURANCE

Agents, Consultants, Solicitors and Adjusters
Business entity election; 806 KAR 9:280
Continuing education; 806 KAR 9:220
Courses of studies, instructors; 806 KAR 9:001
Current licenses in good standing to receive equivalent license; 806 KAR 9:300
Examinations; 806 KAR 9:070
Identification cards; 806 KAR 9:060
Rental vehicle agent; 806 KAR 9:260
Repeal of various administrative regulations; 806 KAR 9:006
Specialty credit insurance producer; 806 KAR 9:250
Time limit for replacement of evidence of licensee financial responsibility; 806 KAR 9:210
Unlicensed adjusters; 806 KAR 9:120
Volume of insurance agent exchange of business; 806 KAR 9:200
Captive Insurers
Application requirements; 806 KAR 49:020
Parents and affiliates; 806 KAR 49:040
Reporting requirements; 806 KAR 49:030
Casualty Insurance Contracts
Automobile liability insurance, declination, cancellation, nonrenewal; 806 KAR 20:020
Property, casualty insurance, declination, cancellation, nonrenewal; 806 KAR 20:010
Fees and Taxes
Fees of the department; 806 KAR 4:010
Group, Blanket Health Insurance
Group health insurance coordination of benefits; 806 KAR 18:030
Health Insurance Contracts
Approval criteria, requirements for reentry into Kentucky health insurance market; 806 KAR 17:220
Conversion policy minimum benefits; 806 KAR 17:260
Data reporting requirements; 806 KAR 17:240
Drug benefits, notification requirements; 806 KAR 17:250
Independent external review program; 806 KAR 17:290
Medical director's signature on health care benefit denials; 806 KAR 17:230
Provider agreement filing requirements; 806 KAR 17:300

SUBJECT INDEX

Registration, utilization review, internal appeal; 806 KAR 17:280
Standards health benefit plan, comparison format; 806 KAR 17:180E
Telehealth claim forms, records; 806 KAR 17:270
Health Maintenance Organizations
Agent license; 806 KAR 38:020
Insurance Contract
Property, casualty insurance form filings; 806 KAR 14:006
Rate, form filing for life and health insurers; 806 KAR 14:005
Life Insurance, Annuity Contracts
Licensing, reporting, general requirements for viatical settlement providers, brokers; 806 KAR 15:040
Motor Vehicle Reparations (No-fault)
Kentucky no-fault rejection form; 806 KAR 39:030
Rates and Rating Organizations
Premium financing; 806 KAR 13:090
Property, casualty rate, rule filings; 806 KAR 13:150
Unauthorized Insurers' Prohibitions, Process, and Advertising
Industrial insured, government entity insured, and exempt commercial policyholder; 806 KAR 11:010

JAIL STANDARDS

(See Corrections)

JUSTICE CABINET

Corrections

Death benefit claims; 501 KAR Chapter 15
Direct supervision for full-service jails; 501 KAR Chapter 10
Institution policies and procedures; 501 KAR Chapter 6
Jail standards, full-service facilities; 501 KAR Chapter 3
Restricted custody centers; 501 KAR Chapter 7

Criminal Justice Training

General training provisions; 503 KAR Chapter 1
Kentucky Law Enforcement Council; 503 KAR Chapter 1

LABOR

Workers' claims; 803 KAR Chapter 25

LEARNING PROGRAMS DEVELOPMENT (EDUCATION)

Health and PE Programs

School health services; 704 KAR 4:020

Instruction

Evaluation guidelines; 704 KAR 3:345
Teachers' professional growth fund; 704 KAR 3:490

LEARNING RESULTS SERVICES (EDUCATION)

Assessment and Accountability

School, district report cards, requirements; 703 KAR 5:140

MATERNAL AND CHILD HEALTH

(See Public Health)

MEDICAID

Medicaid Services

Advanced registered nurse practitioner services; 907 KAR 1:102
Advanced registered nurse practitioner services, reimbursement; 907 KAR 1:104
Dental services, reimbursement; 907 KAR 1:626
Durable medical equipment covered benefits, reimbursement; 907 KAR 1:479E
Home, community based waiver services; 907 KAR 1:170
Inpatient hospital services; 907 KAR 1:012
Inpatient hospital services, payment; 907 KAR 1:013E
Medicaid service category expenditure minimum; 907 KAR 1:790
Mental health center services; 907 KAR 1:044E
Patient access and care system (KenPAC); 907 KAR 1:320E
Pharmacy services; 907 KAR 1:019
Repeal of 907 KAR 1:200, 210, 406, 408, 476; 907 KAR 1:407
Repeal of 907 KAR 1:470, 472, 474; 907 KAR 1:475E

Repeal of 907 KAR 1:635; 907 KAR 1:636

Supports for community living services for individuals with mental retardation or developmental disabilities; 907 KAR 1:145E; 907 KAR 1:155E

Vision Program services, reimbursement; 907 KAR 1:631

Payment and Services

Chiropractic services, reimbursement; 907 KAR 3:125

Health Access Nurturing Development Services Program, coverage and payments; 907 KAR 3:140

Impact Plus services; coverage, payments; 907 KAR 3:030

Medical necessity; 907 KAR 3:130

Nonemergency medical transportation waiver services, payments; 907 KAR 3:066

Physicians' services; 907 KAR 3:005E

Physicians' services, reimbursement; 907 KAR 3:010E

MEDICAL LICENSURE, STATE BOARD

Medical, osteopathic schools approved by board; denial, withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees; 201 KAR 9:021

MENTAL HEALTH, MENTAL RETARDATION SERVICES

Institutional Care

Per diem rate pursuant to the "Patient Liability Act of 1978"; 908 KAR 3:050

Mental Health

Domestic violence offender treatment certification standards; 908 KAR 2:210

Rape crisis centers; standards; 908 KAR 2:070

Mental Health, Mental Retardation Services

Traumatic brain injury trust fund operations; 908 KAR 4:030

MILITARY AFFAIRS

Disaster and Emergency Services

Emergency management assistance fund application; 106 KAR 1:150

Emergency management assistance fund reimbursement claim; 106 KAR 1:160

Emergency management funding; 106 KAR 1:140

Local emergency management agency ordinance requirement; 106 KAR 1:230

Local emergency management agency program quarterly report; 106 KAR 1:170

Local emergency management director appointment process; 106 KAR 1:240

Local emergency management training; 106 KAR 1:210

Local exercise; 106 KAR 1:220

Local plan; 106 KAR 1:200

Project application; 106 KAR 1:180

Project application reimbursement; 106 KAR 1:190

Repeal of 106 KAR 1:060; 106 KAR 1:280

Repeal of 106 KAR 1:075; 106 KAR 1:270

Rescue aid fund allocation; 106 KAR 1:340

Rescue aid fund application; 106 KAR 1:360

Rescue aid fund expenditure documentation; 106 KAR 1:370

Rescue squad cumulative equipment inventory form; 106 KAR 1:380

Rescue squad minimum equipment; 106 KAR 1:350

Search and rescue mission notification, report form; 106 KAR 1:300

Search and rescue quarterly incident report form; 106 KAR 1:320

Search and rescue quarterly training report form; 106 KAR 1:310

Search and rescue squad quarterly active membership list form; 106 KAR 1:330

Search and rescue training requirements; 106 KAR 1:390

Specialized rescue squad alternative affiliation agreement process; 106 KAR 1:290

Supplementary state fund expense reimbursement eligibility list;

SUBJECT INDEX

106 KAR 1:260
Workers' compensation enrollment form; 106 KAR 1.250

MILK AND CREAM

Farm bulk tanks, purchases from; 12 KAR 5:060
Inspections; 12 KAR 5:050
Licenses; 12 KAR 5:010
Payment, uniform standards; 12 KAR 5:070
Sampling and weighing; 12 KAR 5:040
Test samples; 12 KAR 5:030
Testing; 12 KAR 5:020

MORTGAGE LOAN COMPANIES, BROKERS

(See Financial Institutions)

MOTOR CARRIERS

(See Vehicle Regulation)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Environmental Protection
Air quality; 401 KAR Chapters 50, 51, 52
Water; 401 KAR Chapter 8

NURSING, BOARD OF

Advanced registered nurse practitioners scope, standards of practice;
201 KAR 20:057
Advanced registered nurse practitioner registration, program
requirements, recognition of a national certifying organization; 201
KAR 20:056
Alternative program; 201 KAR 20:450
Contact hours, recordkeeping, reporting requirements, renewal of
licensure; 201 KAR 20:215
Fees for applications, services; 201 KAR 20:240
Inactive nurse licensure status; 201 KAR 20:095
License reinstatement; 201 KAR 20:225
Licensure by endorsement; 201 KAR 20:110
Licensure by examination; 201 KAR 20:070
Nursing continuing education provider approval; 201 KAR 20:220
Prelicensure programs, organization, administration; 201 KAR 20:260

OCCUPATIONS AND PROFESSIONS

Accountancy; 201 KAR Chapter 1
Counselors (professional); 201 KAR Chapter 36
Dentistry; 201 KAR Chapter 8
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Ophthalmic dispensers; 201 KAR Chapter 13
Pharmacy; 201 KAR Chapter 2
Physical therapy; 201 KAR Chapter 22
Real estate appraisers; 201 KAR Chapter 30
Real Estate Commission; 201 KAR Chapter 11
Social work; 201 KAR Chapter 23
Veterinary examiners; 201 KAR Chapter 16

OPHTHALMIC DISPENSERS

Apprentices; 201 KAR 13:050
Board, powers, duties, meetings; 201 KAR 13:010
Contact lens fitting; 201 KAR 13:030
Continuing education requirements; 201 KAR 13:055
Licensing, application, examination, temporary permit, inactive status;
201 KAR 13:040
Military service, reciprocity; 201 KAR 13:060
Repeal of 201 KAR 13:011; 201 KAR 13:012

PARKS

Campgrounds; 304 KAR 1:040

PEACE OFFICERS

(See Criminal Justice Training)

PERSONNEL

Classified
Annual leave sharing procedures; 101 KAR 2:106
Employee performance evaluation system; 101 KAR 2:180
Worker's Compensation Fund, Program; 101 KAR 2:140

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND

Claims procedure; 415 KAR 1:080

PHARMACY BOARD

Pharmacist-in-charge; 201 KAR 2:205
Special limited pharmacy, charitable pharmacy; 201 KAR 2:240

PHYSICAL THERAPY BOARD

Assistant's certification procedure; 201 KAR 22:106
Fees; 201 KAR 22:135
Foreign-educated physical therapists, requirements; 201 KAR 22:070
Per diem of board members; 201 KAR 22:130
Physical therapy practitioners committee funding; 201 KAR 22:140
Therapist's licensing procedure; 201 KAR 22:031

PLUMBING

(See Housing, Buildings and Construction)

POSTSECONDARY EDUCATION

Nonpublic Colleges
Campus security; 13 KAR 1:030
Public Educational Institutions
Campus security; 13 KAR 2:100
Kentucky Educational Excellence Scholarship Program; 13 KAR
2:090

PROFESSIONAL COUNSELORS

(See Counselors (Professional))

PROSECUTORS ADVISORY COUNCIL

(See Attorney General)

PUBLIC EDUCATIONAL INSTITUTIONS

(See Postsecondary Education)

PUBLIC HEALTH (DEPARTMENT FOR)

Communicable Diseases
Disease surveillance; 902 KAR 2:020
Immunization schedules; 902 KAR 2:060
Family Health Care Providers Board
Charitable health care providers; 902 KAR 22:040
Food and Cosmetics
Bed and breakfast; 902 KAR 45:006
Hotels, mobile home parks, recreational vehicle parks, youth
camps, private water supplies, inspection and permit fees;
902 KAR 45:120
Retail food establishments, food manufacturing plants, food
storage warehouses, salvage processors and distributors,
vending machine companies, seasonal restricted food con-
cessions, permits and fees; 902 KAR 45:110
Health Services and Facilities
Adult day health care programs; 902 KAR 20:066E
Hospitals, operations and services; 902 KAR 20:016
License procedures, fee schedule; 902 KAR 20:008E
Psychiatric hospitals, operation and services; 902 KAR 20:180
Maternal and Child Health
Health Access Nurturing Development Services Program; 902
KAR 4:120
Newborn hearing screening equipment grant award; 902 KAR
4:085
Radiology
Industrial radiography; 902 KAR 100:010

SUBJECT INDEX

Reciprocal recognition; 902 KAR 100:065
Sanitation
On-site sewage disposal application fee; 902 KAR 10:060
Public swimming, bathing facilities, inspection fees; 902 KAR 10:121
State Health Plan
Data reporting by health care providers; 902 KAR 17:040
Plan for facilities and services; 902 KAR 17:041
Release of public data sets for health care discharge data; 902 KAR 17:050

PUBLIC PROTECTION AND REGULATION CABINET

Alcoholic Beverage Control
Licensing; 804 KAR Chapter 4
Financial Institutions
Administration; 808 KAR Chapter 1
Check cashing; 808 KAR Chapter 9
Mortgage loan companies, brokers; 808 KAR Chapter 12
Securities; 808 KAR Chapter 10
Insurance
Agents, consultants, solicitors and adjusters; 806 KAR Chapter 9
Captive insurers; 806 KAR Chapter 49
Casualty insurance contracts; 806 KAR Chapter 20
Fees and taxes; 806 KAR Chapter 4
Group, blanket health insurance; 806 KAR Chapter 18
Health insurance contracts; 806 KAR Chapter 17
Health maintenance organizations; 806 KAR Chapter 38
Insurance contract; 806 KAR Chapter 14
Life insurance, annuity contracts; 806 KAR Chapter 15
Motor vehicle reparations (no-fault); 806 KAR Chapter 39
Rates and rating organizations; 806 KAR Chapter 13
Unauthorized insurers' prohibitions, process, and advertising; 806 KAR Chapter 11
Housing, Buildings and Construction
Electrical inspectors; 815 KAR Chapter 35
Kentucky Building Code; 815 KAR Chapter 7
Plumbing; 815 KAR Chapter 20
Petroleum Storage Tank Environmental Assurance Fund; 415 KAR Chapter 1
Public Service Commission; 807 KAR Chapter 5
Racing Commission
Harness racing; 811 KAR Chapter 1
Thoroughbred racing; 810 KAR Chapter 1

PUBLIC SERVICE COMMISSION

Antenna towers for cellular communications services or personal communication services, filing requirements, procedures for construction proposals; 807 KAR 5:063

RACING

Harness racing; 811 KAR Chapter 1
Thoroughbred racing; 810 KAR Chapter 1

RADIOLOGY

(See Public Health)

REAL ESTATE APPRAISERS

Definitions; 201 KAR 30:010
Examination, education, experience requirement; 201 KAR 30:050
Federally-related transactions, certification, licensure; types of appraisers required; 201 KAR 30:030
Fees; 201 KAR 30:060
Standards of practice; 201 KAR 30:040
Temporary appraisal licenses, certificates; 201 KAR 30:120

REAL ESTATE COMMISSION

Agency disclosure requirements; 201 KAR 11:400
Closing statement; 201 KAR 11:095
Continuing education, mandatory; 201 KAR 11:230

Contracts to contain financing provisions; 201 KAR 11:040
Criminal records background check, procedure of new applicant; 201 KAR 11:430
Definitions; 201 KAR 11:011
Improper conduct; 201 KAR 11:121
Instruments prepared by broker, disposition; 201 KAR 11:090
Licensing, education, testing requirements; 201 KAR 11:210
Listing, purchase contracts; provisions required; 201 KAR 11:250
Owner's consent, authorization; 201 KAR 11:105
Personal assistant duties; 201 KAR 11:440
Private school approval; 201 KAR 11:170
Property management procedure, guidelines; 201 KAR 11:245
Repeal of 201 KAR 11:070; 201 KAR 11:071
Repeal of 201 KAR 11:160; 201 KAR 11:161
Retention of brokers' records; 201 KAR 11:062
Rules of practice and procedure; 201 KAR 11:190
Salesman's duties when terminating affiliation; 201 KAR 11:145
Salesman's obtaining broker's license; 201 KAR 11:135
Seller's disclosure of condition form; 201 KAR 11:350
Standards for Internet advertising; 201 KAR 11:420
Written offers submitted to owner-client; 201 KAR 11:045

RESTRICTED CUSTODY CENTER

(See Corrections)

RETIREMENT

Kentucky Employees Retirement System
Annual disability review; 105 KAR 1:220
Death before retirement procedures; 105 KAR 1:180
Disability procedures; 105 KAR 1:210
Installment purchase procedures; 105 KAR 1:150
Medical insurance reimbursement plan; 105 KAR 1:290
Out-of-state service credit purchase; 105 KAR 1:260
Repeal of 105 KAR 1:205, 1:230, 1:280; 105 KAR 1:231
Retirement procedures and forms; 105 KAR 1:200
Service credit determination for classified employees; 105 KAR 1:300
Sick leave plans; 105 KAR 1:160
Teachers' Retirement
General
Final average salary based on average of 3 highest salaries; 102 KAR 1:220

REVENUE

(See also Taxation)
Ad Valorem Tax
Administration; 103 KAR Chapter 5
Sales and Use Tax
Miscellaneous retail transactions; 103 KAR Chapter 28
Selective Excise Tax
Motor vehicle usage; 103 KAR Chapter 44

SECURITIES

(See Financial Institutions)

SOCIAL WORK, BOARD OF

Code of ethical conduct; 201 KAR 23:080
Qualifying education, qualifying experience under supervision; 201 KAR 23:070
Temporary permission to practice; 201 KAR 23:015

SPECIAL INSTRUCTIONAL SERVICES (EDUCATION)

Fiscal Management
Equalization of funding for locally-operated area vocational centers and vocational departments; 705 KAR 2:140
Repeal of 705 KAR 2:120; 705 KAR 2:121
Instructional Programs
Cooperative program standards; 705 KAR 4:041
General program standards for secondary career and technical

SUBJECT INDEX

education programs; 705 KAR 4:231
Repeal of 705 KAR 4:051; 705 KAR 4:052

TAXATION

Ad Valorem Tax
Administration
Property valuation administrator office employees, payment
of leave upon separation; 103 KAR 5:160
Sales and Use Tax
Miscellaneous Retail Transactions
Telephonic and telegraphic communications and services;
103 KAR 28:140E
Selective Excise Tax
Motor Vehicle Usage
Tax valuation; 103 KAR 44:060

TEACHERS' RETIREMENT

(Also see Retirement)
General retirement rules; 102 KAR Chapter 1

THOROUGHBRED RACING

Disciplinary measures; 810 KAR 1:028
Entries, subscriptions, and declarations; 810 KAR 1:027
Jockeys and apprentices; 810 KAR 1:009
Racing associations; 810 KAR 1:026

TOURISM CABINET

Fish and Wildlife Resources
Fish; 301 KAR Chapter 1
Game; 301 KAR Chapter 2
Hunting and Fishing; 301 KAR Chapter 3
Licensing; 301 KAR Chapter 5
Water patrol; 301 KAR Chapter 6
Parks; 304 KAR Chapter 1
Tourism Development Loan Program, criteria; 300 KAR 2:020

TRAINING AND DEVELOPMENT (WORKFORCE DEVELOPMENT)

1999-2004 Strategic Five Year State Workforce Investment Plan; 790
KAR 1:020

TRANSPORTATION

Highways
Mass transportation; 603 KAR Chapter 7
Vehicle Regulation
Motor carriers; 601 KAR Chapter 1

VEHICLE REGULATION

Motor Carriers
Permit for hauling industrial materials, fee, bond; 601 KAR 1:020

VETERINARY EXAMINERS (BOARD)

Examination; 201 KAR 16:100

VITAL STATISTICS

Fees for searches, certified copies of certificates and records;
901 KAR 5:050

WATER

Public Water Supply
Consumer confidence reports; 401 KAR 8:075
Definitions; 401 KAR 8:010
Disinfection, filtration; 401 KAR 8:150
Disinfection byproducts; 401 KAR 8:500
Disinfection residuals, byproducts, byproduct precursors; 401
KAR 8:510
Public notification; 401 KAR 8:070
Public, semipublic water supplies, general provisions; 401 KAR
8:020

WORKERS' CLAIMS

Managed health care plans; 803 KAR 25:110
Procedure for adjustment of claims; 803 KAR 25:010
Provision of workers' compensation rehabilitation services; 803 KAR
25:101
Resolution of medical disputes; 803 KAR 25:012
Utilization review and medical bill audit; 803 KAR 25:190

WORKFORCE DEVELOPMENT CABINET

Adult and Technical Education
Personnel system for certified and equivalent employees; 780
KAR Chapter 3
Blind, Department of; 782 KAR Chapter 1
Training and development; 790 KAR Chapter 1

