

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 29, NUMBER 1
MONDAY, JULY 1, 2002

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on Tuesday, July 9, 2002, at 10 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages 1-2 of this Administrative Register.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - July 9, 2002 at 10:00 a.m., Room 149, Capitol Annex**

**DEPARTMENT OF LAW
Office of the Attorney General**

Consumer Protection

- 40 KAR 2:001E. Definitions for 40 KAR Chapter 2. ("E" expires 11/18/02)
- 40 KAR 2:075E. Commonwealth of Kentucky No Telephone Solicitation Calls List. ("E" expires 11/18/02)
- 40 KAR 2:076E. Procedures and notification of violations of KRS 367.46955 and 367.170 relative to telephone solicitations. ("E" expires 11/18/02)

Racial Profiling

- 40 KAR 7:010. Procedures for reporting allegations of racial profiling. (Deferred from October)

KENTUCKY TEACHERS' RETIREMENT SYSTEM

General Rules

- 102 KAR 1:260. Summary plan description.
- 102 KAR 1:270. Statement of member account.

REVENUE CABINET

General Administration

- 103 KAR 1:050. Forms manual. (Deferred from June)

BOARD OF CLAIMS

Practice and Procedure

- 108 KAR 1:010. Board operation and claim procedure.

BOARDS AND COMMISSIONS

Board of Optometric Examiners

- 201 KAR 5:030. Annual courses of study required.

Real Estate Commission

- 201 KAR 11:420. Standards for Internet advertising.

TOURISM CABINET

Department of Fish and Wildlife Resources

Fish

- 301 KAR 1:201. Fishing limits.

Game

- 301 KAR 2:075. Wildlife rehabilitation permits. (Deferred from June)
- 301 KAR 2:111. Deer and turkey hunting on federal areas.
- 301 KAR 2:178. Deer hunting on wildlife management areas.

Hunting and Fishing

- 301 KAR 3:022. License, tax and permit fees. (Deferred from June)

Water Patrol

- 301 KAR 6:040E. Zoning or marking of waterways. ("E" expires 10/18/02) (Deferred from June)

DEPARTMENT OF AGRICULTURE

Livestock Sanitation

- 302 KAR 20:010. Definitions. (Deferred from June)
- 302 KAR 20:100. Garbage. (Not Amended After Hearing) (Deferred from June)
- 302 KAR 20:120. Treatment of imported stallions.
- 302 KAR 20:250E. Avian influenza. ("E" expires 11/18/02)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

**Department for Environmental Protection
Division of Water**

Water Quality

- 401 KAR 5:002. Definitions for 401 KAR Chapter 5.
- 401 KAR 5:055. Scope and applicability of the KPDES Program.
- 401 KAR 5:057. KPDES pretreatment requirements.
- 401 KAR 5:060. KPDES application requirements.
- 401 KAR 5:065. KPDES permit conditions.
- 401 KAR 5:070. Provisions of the KPDES permit.
- 401 KAR 5:075. Cabinet review procedures for KPDES permits.

JUSTICE CABINET

Department of Corrections

Office of the Secretary

- 501 KAR 6:170. Green River Correctional Complex.
- 501 KAR 6:999. Corrections secured policies and procedures.

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Department of State Police

Personnel; General

502 KAR 5:020. Code of ethics.

LABOR CABINET

Department of Workers' Claims

803 KAR 25:010E. Procedure for adjustments of claims. ("E" expires 11/18/02)

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals

Sanctions and Penalties (Not Amended After Hearing) (Deferred from June)

805 KAR 8:010. Definitions for 805 KAR Chapter 8.

805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.

805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

Department of Insurance

Rates and Rating Organizations

806 KAR 13:150. Property and casualty rate and rule filing.

Public Service Commission

Utilities

807 KAR 5:100E. Board application fees. ("E" expires 11/18/02)

807 KAR 5:110E. Board proceedings. ("E" expires 11/18/02)

Kentucky Racing Commission

Harness Racing

811 KAR 1:105. Review and appeal. (Deferred from May)

CABINET FOR HEALTH SERVICES

Department for Public Health

Communicable Diseases

902 KAR 2:151. Repeal of 902 KAR 2:150 and 902 KAR 2:160. (Deferred from June)

902 KAR 2:180. Human immunodeficiency virus/acquired immunodeficiency disease syndrome (HIV/AIDS) education approval requirements. (Deferred from June)

Sanitation

902 KAR 10:085. Kentucky on-site sewage disposal systems. (Amended After Hearing) (Deferred from June)

State Health Plan

902 KAR 17:041E. State Health Plan for facilities and services. ("E" expires 10/18/02) (Deferred from June)

Health Services and Facilities

902 KAR 20:016E. Hospitals; operations and services. ("E" expires 8/18/02) (Deferred from April)

902 KAR 20:380E. Operations and services; residential hospice facilities. ("E" expires 11/18/02)

Department for Medicaid Services

Services

907 KAR 1:013E. Payments for hospital inpatient services. ("E" expires 7/19/02) (Deferred from March)

907 KAR 1:018E. Reimbursement for drugs. ("E" expires 10/18/02) (Deferred from June)

907 KAR 1:019E. Outpatient Pharmacy Program. ("E" expires 11/18/02)

907 KAR 1:025 & E. Payment for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit. ("E" expires 8/18/02)

907 KAR 1:031E. Payments for home health services. ("E" expires 8/18/02) (Deferred from April)

907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability. ("E" expires 11/18/02)

907 KAR 1:170E. Payments for home and community based waiver services. ("E" expires 8/18/02) (Deferred from April)

907 KAR 1:320 & E. Kentucky Patient Access and Care System (KenPAC). ("E" expires 9/18/2002)

907 KAR 1:720 & E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency. ("E" expires 8/18/02)

Commission for Children with Special Health Care Needs

Children with Special Health Care Needs Services

911 KAR 1:080. SSI Children's Support Services (SSI/CSS) Program.

CABINET FOR FAMILIES AND CHILDREN

Department of Community Based Services

Protection and Permanency

Child Welfare

922 KAR 1:360. Private child care placement, levels of care, and payment. (Public Hearing in May)

922 KAR 1:460. Standards for youth wilderness camps. (Amended After Hearing) (Deferred from April)

Day Care

922 KAR 2:170. Stars for KIDS NOW Program for type I licensed child care centers.

922 KAR 2:210. Stars for KIDS NOW Program for family child care providers.

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

Notice of Intent

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

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

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS
RECEIVED AS OF NOON, JUNE 14, 2002

COUNCIL ON POSTSECONDARY EDUCATION

June 10, 2002

(1) **13 KAR 2:025**. College preparatory education.

(2) SB 74 (2002 Regular Session) mandates that the Council on Postsecondary Education, beginning with the 2003-04 academic year, develop an administrative regulation requiring public postsecondary education institutions to grant academic credit toward college graduation for students taking high school advanced placement courses and scoring at a certain level.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 25, 2002, 10 a.m. at the Council on Postsecondary Education, Suite 320, 1024 Capital Center Drive, Frankfort, Kentucky, Conference Room B.

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

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

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

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to July 25, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request no later than July 15, 2002, to the following address: Council on Postsecondary Education, Dianne Bazell, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, phone (502) 573-1555, fax (502) 573-1535.

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

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

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

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

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

(a) The statutory authority for the promulgation of an administrative regulation relating to 13 KAR 2:025, College preparatory education is SB 74 (2002 Regular Session).

(b) The administrative regulation the Council on Postsecondary Education intends to promulgate is a new regulation. It will require public postsecondary education institutions to grant academic credit toward college graduation for students taking high school advanced placement courses and scoring at a certain level.

(c) The necessity and function of the proposed administrative regulation is as follows: Conform to the requirements of SB 74 (2002 Regular Session).

(d) The benefits expected from administrative regulation are to ensure credit is granted at public postsecondary education institutions to students taking high school advanced placement courses and scoring at a certain level.

(e) This administrative regulation will be implemented by the Council on Postsecondary Education with participation by public postsecondary education institutions.

DEPARTMENT OF TREASURY

June 12, 2002

(1) **20 KAR 2:010**, Definitions for 20 KAR Chapter 2.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department of Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the definitions for administrative regulations relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund.

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(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorize the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the definitions for administrative regulations relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund.

(d) The benefit expected from the proposed amendment to the administrative regulation is that certain terms used in administrative regulations relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund will have a uniform connotation.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:040**, Applying for a prepaid tuition contract.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the application procedure for entering into a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorize the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the application procedure for entering into a prepaid tuition contract with the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the application procedure for entering into a prepaid tuition contract with the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:050**, Prepaid tuition contract prices, payments, and default.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

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(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the procedures and guidelines for pricing, payments, and default of a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.704(1) and (6) authorizes the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the procedures and guidelines for pricing, payments, and default of a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the procedures and guidelines for pricing, payments, and default of a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:060**, Amendment of a prepaid tuition contract.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the procedures and guidelines for amending a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorizes the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the procedures and guidelines for amending a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the procedures and guidelines for amending a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:070**, Using prepaid tuition contract benefits.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Pre-

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paid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the procedures and guidelines for using the benefits of a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorizes the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the procedures and guidelines for using the benefits of a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the procedures and guidelines for using the benefits of a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:080**, Terminating a prepaid tuition contract.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the procedures and guidelines for terminating a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorizes the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the procedures and guidelines for terminating a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the procedures and guidelines for terminating a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:090**, Refunds.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the procedures and guidelines for obtaining a refund under a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorizes the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the procedures and guidelines for obtaining a refund under a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the procedures and guidelines for obtaining a refund under a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:100**, Administrative fees.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director, State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the procedures and guidelines for administrative fees related to a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorizes the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to set fees and establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the administrative fees and procedures and guidelines for administrative fees under a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the administrative fees and procedures and guidelines for administrative fees under a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

June 12, 2002

(1) **20 KAR 2:110**, Grievance procedure.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 22, 2002 at 9 a.m., at the Department of Treasury, 701 Capital Avenue, Suite 183, 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 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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: JoCarole Ellis, Policy Director,

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State Capital Annex, 701 Capitol Avenue, Suite 183, Frankfort, Kentucky 40601, Phone (502) 564-4722, Fax (502) 564-6545, E-mail: JoCarole.Ellis@mail.state.ky.us.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund at the address listed above.

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

(a) The statutory authority for the promulgation of an amendment to an administrative regulation relating to the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund is KRS 164A.704(1) and (6).

(b) The administrative regulation that the Department for Treasury intends to promulgate is an amendment to the current administrative regulation that establishes the procedures and guidelines for grievances related to a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 164A.704(1) and (6) authorizes the Board of Directors of the Commonwealth Postsecondary Prepaid Tuition Trust Fund to establish the requirements, procedures, and guidelines for participating in the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund. This proposed amendment to the administrative regulation clarifies the procedures and guidelines for grievances under a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(d) The benefits expected from the proposed amendment to the administrative regulation are the effective implementation of the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund and fully informing the public about the procedures and guidelines for grievances under a prepaid tuition contract with the Commonwealth Postsecondary Prepaid Tuition Trust Fund.

(e) The proposed amendment to the administrative regulation will be implemented as follows: By the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund Board of Directors and the Tuition Account Program Office in the Office of the State Treasurer.

STATE BOARD OF ELECTIONS

June 14, 2002

(1) **31 KAR 3:010**. Current address of Kentucky registered voters.

(2) The State Board of Elections 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 July 22, 2002, 10 a.m. at the Board office at 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

(b) If a request or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mary Sue Helm, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amending the administrative regulation is KRS 117.027 and 117.015(1).

(b) The administrative regulation that the State Board of Elections intends to amend will create a definition for the term "commercial use" as that term is used in KRS 117.025(3)(h).

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: The Board of Elections has established a definition it will use in the future to determine when requests for a copy of the statewide voter registration list will not be released to persons who intend to use the list for a commercial use.

(d) The benefits expected from administrative regulation are: Persons interested in obtaining a copy of the lists will be able to determine if they qualify to obtain a copy of the list.

(e) The administrative regulation will be implemented as follows: Once the administrative regulation is in place the Board of Elections will grant or deny requests for a copy of the list based upon the definition.

KENTUCKY RETIREMENT SYSTEMS

June 14, 2002

(1) **105 KAR 1:020**. Reciprocal program between CERS, KERS, SPRS, TRS, and LRP.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502)

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564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 reciprocal program between CERS, KERS, SPRS, TRS, and LRP and the purchase of military service credit is KRS 16.505 to 16.645, 61.510 to 61.700, 78.510 to 78.990, 161.600(3), 161.675, 61.555 and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will allow for reciprocity of other state retirement systems and the purchase of military service credit consistent with the legislative changes of KRS 61.555.

(c) The necessity and function of the proposed administrative regulation is as follows: The 2002 General Assembly enacted legislation amending the purchase of military service credit. The Kentucky Retirement Systems needs to amend the administrative regulation to conform with changes enacted in KRS 61.555 relating to reciprocity with state retirement systems and the purchase of military service.

(d) The benefits expected from the administrative regulation are: Members participating in one of the retirement systems administered by the Kentucky Retirement Systems or other state retirement systems will be allowed reciprocity when purchasing military service credit.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the method under reciprocity for dividing military service credit purchase between the state retirement systems.

June 14, 2002

(1) **105 KAR 1:120.** Participation of agencies.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 participation of agencies is KRS 78.510(3), 78.530, 78.532, 78.535, 78.780, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will establish a method for verifying that county agencies wishing to participate in the retirement systems have contracted for health insurance coverage with the state Personnel Cabinet.

(c) The necessity and function of the proposed administrative regulation is as follows: The 2002 General Assembly enacted legislation requiring county agencies wishing to participate in the retirement systems also have an irrevocable contract with the state Personnel Cabinet for health insurance coverage. The Kentucky Retirement Systems needs a method for verifying that county agencies have contracted for health insurance coverage with the state Personnel Cabinet.

(d) The benefits expected from the administrative regulation are: By establishing a method for verifying that county agencies wishing to participate in the retirement systems have contracted for health insurance coverage with the state Personnel Cabinet, the Kentucky Retirement Systems will be able to accept and process applications from county agencies for participation in the retirement systems.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary documents and filing deadline for submitting proof of contract with the state Personnel Cabinet for health insurance coverage before the county agencies participation date in the retirement systems.

June 14, 2002

(1) **105 KAR 1:140.** Contribution reporting.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an admin-

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istrative 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 Retirement Systems 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 contribution reporting is KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 26 USC 401(a)(17), and KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will govern agency contribution reporting and bonuses, as well as update forms.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems needs a method for agencies reporting contributions to properly report bonuses as creditable compensation.

(d) The benefits expected from the administrative regulation are: By establishing a reporting requirements for agencies to properly report bonuses as creditable compensation, the Kentucky Retirement Systems will be able to more timely and accurately provide estimates to members and benefits to retirees.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary reporting requirements for agencies to properly report bonuses as creditable compensation.

June 14, 2002

(1) **105 KAR 1:150.** Installment purchase procedures.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 installment purchase procedures is KRS 16.645(20), 61.373, 61.377, 61.552(16), 78.545(35), 26 USC 415, 29 USC 28, 38 USC 43, and KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will require the employer to advise the retirement systems that an employee with an installment purchase agreement is on sick leave without pay or active military duty, and will provide for the payoff of the installment purchase agreement in full.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems needs to be advised of the employee status because installment purchase agreements can be effected if the employee is on sick leave without pay or active military duty. Also, payoff of the installment purchase agreement must conform with the requirements of 26 USC 415.

(d) The benefits expected from the administrative regulation are: By having the employer notify the retirement systems if an employee who has an installment purchase agreement is on sick leave without pay or active military duty, the employer can be advised of the effect on the agreement, and payoff of an installment purchase agreement can be made if in compliance with 26 USC 415.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary requirements for agencies to advise if an employee with an installment purchase agreement is on sick leave without pay or active military service, and installment purchase agreement payoff requirements in compliance with 26 USC 415.

June 14, 2002

(1) **105 KAR 1:160.** Sick leave plans.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to sick leave plans is KRS 61.546, 61.5525, 78.616, 161.155, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will establish requirements for calculation and additional sick leave billing based upon final compensation.

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(c) The necessity and function of the proposed administrative regulation is as follows: Under KRS 61.546(3) and KRS 78.616(3), the statute requires when paying for additional sick leave service that the employer pay to the retirement systems the value of the additional service credit. By using the final compensation, the true value of the additional sick leave service can be calculated.

(d) The benefits expected from the administrative regulation are: The correct cost for calculating the additional sick leave billing can be determined by using the final compensation and paid by the employer.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary requirements related to additional sick leave billings based upon final compensation.

June 14, 2002

(1) **105 KAR 1:170.** Membership form requirements.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 membership form requirements is KRS 16.530, 61.525, 61.526, 61.540, 61.542, 61.545, 61.625, 78.540, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will update membership forms to reflect changes in the forms.

(c) The necessity and function of the proposed administrative regulation is as follows: The regulation will update membership forms to reflect changes in the forms.

(d) The benefits expected from the administrative regulation are: The required membership forms will reflect the changes in the forms.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will update the membership forms to reflect the changes in the forms.

June 14, 2002

(1) **105 KAR 1:180.** Death before retirement procedures.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 death before retirement procedures is KRS 16.578, 16.601, 61.640, 78.545, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will improve procedures for processing death before retirement benefits for beneficiaries.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems desires to improve procedures for processing death before retirement benefits for beneficiaries.

(d) The benefits expected from the administrative regulation are: By establishing improved procedures for processing death before retirement benefits, the retirement systems can more timely and effectively process benefits for beneficiaries.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary procedures for improving the processing of death before retirement benefits for beneficiaries.

June 14, 2002

(1) **105 KAR 1:200.** Retirement procedures and forms.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 retirement procedures and forms is KRS 16.576, 16.577, 16.645, 61.590, 61.595, 61.702, 61.705, 78.545, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will improve retirement procedures and update forms.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems will improve retirement procedures for processing retirement benefits for updating retirement forms.

(d) The benefits expected from the administrative regulation are: By establishing improved procedures for processing retirement benefits and updating forms, the retirement systems can more timely and effectively process benefits for retirees.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary procedures for improving the processing of retirement benefits and updating forms.

June 14, 2002

(1) **105 KAR 1:210.** Disability procedures.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 disability procedures is KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 344.030, 29 CFR Part 1630, 42 USC 12111(9), and KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will no longer require the court order of guardianship be submitted for a dependent and will require more frequent submission of proof of a dependent child's educational status.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems will improve procedures for processing disability retirement benefits for dependent children, and not pay out benefits in error to unmarried children over age 18 who are no longer full-time students.

(d) The benefits expected from the administrative regulation are: By establishing improved procedures for processing disability retirement benefits, the retirement systems can more timely and effectively process benefits for dependent children.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary procedures for improving the processing of disability retirement benefits for dependent children.

June 14, 2002

(1) **105 KAR 1:215.** Administrative hearing.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 administrative hearings is KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will conform with the legislative change in executive title that a request for hearing be directed to the executive director, and not the general manager.

(c) The necessity and function of the proposed administrative regulation is as follows: The 2002 General Assembly enacted legislation changing the title of general manager to executive director. The Kentucky Retirement Systems needs to amend the administrative regulation on who to direct a request for hearing to conform with the legislative change in executive title.

(d) The benefits expected from the administrative regulation are: The administrative regulation that the Kentucky Retirement Systems intends to promulgate will conform with the legislative change in executive title that a request for hearing be directed to the executive director, and not the general manager.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will change the administrative regulation regarding requests for administrative hearing to reflect changes in statutory references to executive director.

June 14, 2002

(1) **105 KAR 1:240.** Death after retirement procedures.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 death after retirement procedures is KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will improve procedures and update forms, including requiring direct deposit of benefits, for processing death after retirement benefits for beneficiaries.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems will improve procedures for processing death after retirement benefits for beneficiaries.

(d) The benefits expected from the administrative regulation are: By establishing improved procedures for processing death before retirement benefits, the retirement systems can more timely and effectively process benefits for beneficiaries.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary procedures for improving the processing of death before retirement benefits for beneficiaries.

June 14, 2002

(1) **105 KAR 1:250.** Participation of county attorney employees.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 participation of county attorney employees is KRS 78.5302 and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will update forms for designating the proper retirement system to which the county attorney employee should participate.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems will update forms relating to participation of county attorney employees.

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(d) The benefits expected from the administrative regulation are: By establishing improved procedures including updated forms, the retirement systems can more effectively administer the retirement accounts of employees of the county attorney.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will update the necessary forms for improving the administration of the retirement accounts of employees of the county attorney.

June 14, 2002

(1) **105 KAR 1:260.** Purchase of out-of-state service credit.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 purchase of out-of-state service credit is KRS 61.552(17), 61.552(18), 26 USC 415, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will allow for purchase of out-of-state hazardous service in KERS and SPRS, and repeal the current version of 105 KAR 1:260 for purchase of out-of-state service, and be added to 105 KAR 1:330 for service purchase procedures.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems currently allows out-of-state hazardous service to be purchased in CERS and will extend the purchase of out-of-state hazardous service to KERS and SPRS.

(d) The benefits expected from the administrative regulation are: Employees in KERS and SPRS will now be able to purchase out-of-state hazardous service.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented upon enactment.

June 14, 2002

(1) **105 KAR 1:270.** Special federal income tax withholding.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 special federal income tax withholding is KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will conform to federal income tax withholding on lump sum payments consistent with recent laws allowing for rollover.

(c) The necessity and function of the proposed administrative regulation is as follows: The regulation should be updated consistent with changes in federal income tax withholding laws concerning rollovers.

(d) The benefits expected from the administrative regulation are: By conforming the administrative regulation consistent with federal income tax withholding laws and rollovers, the Kentucky Retirement Systems can make lump sum payments of benefits and give proper tax withholding consideration.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented upon enactment.

June 14, 2002

(1) **105 KAR 1:290.** Medical insurance reimbursement plan.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 medical insurance reimbursement plan is KRS 61.702, 26 USC 105(b), 26 USC 213(d), and KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will reduce the number of forms that need to be submitted to claim medical insurance reimbursement.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems will improve procedures for processing medical insurance reimbursement claims.

(d) The benefits expected from the administrative regulation are: By establishing improved procedures for claiming medical insurance reimbursement compensation, the Kentucky Retirement Systems will be able to more timely provide reimbursements to retirees.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary forms and regulations for retirees to file for medical insurance reimbursement claims.

June 14, 2002

(1) **105 KAR 1:300.** Determination of service credit for classified employees.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 determination of service credit for classified employees is KRS 61.545, 61.552, 78.615, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will establish the calculation for determination of retirement service credit for classified employees of local school boards. This administrative regulation establishes audit procedures to be used to determine service credit for previous years of work.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems will adopt audit procedures to be used to determine service credit for previous years of work for classified employees of local school boards consistent with the law in effect at the time of work.

(d) The benefits expected from the administrative regulation are: By incorporating audit procedures into administrative regulation, the classified employees of local school boards will get proper credit for service during the term of their employment.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary audit procedures to determine service credit for classified employees of local school boards.

June 14, 2002

(1) **105 KAR 1:310.** Fred Capps Memorial Act.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an admin-

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istrative 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 Retirement Systems 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 Fred Capps Memorial Act is KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will allow a beneficiary to file documents for application for duty-related death benefits, and no longer require the court order of guardianship be submitted for a dependent and will require more frequent submission of proof of a dependent child's educational status.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Retirement Systems will improve procedures for application for duty-related death benefits by allowing a beneficiary to submit forms, and processing duty-related benefits for dependent children, and not pay out benefits in error to unmarried children over age 18 who are no longer full-time students.

(d) The benefits expected from the administrative regulation are: By establishing improved procedures for processing duty-related benefits, the retirement systems can more timely and effectively process benefits for beneficiaries and dependent children.

(e) The administrative regulation will be implemented as follows: The Kentucky Retirement Systems will establish the necessary procedures for improving the processing of duty-related benefits for beneficiaries and dependent children.

June 14, 2002

(1) **105 KAR 1:330**. Purchase of service credit.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 purchase of service credit is KRS 16.537, 61.543, 61.552, 61.5525, 61.555, 61.558, 61.592, 78.605, and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will allow payment due date that falls on a weekend or holiday to be paid on the following work day, and allow for purchase of out-of-state service by repealing the current version of 105 KAR 1:260 for purchase of out-of-state service, and be added to 105 KAR 1:330 for service purchase procedures.

(c) The necessity and function of the proposed administrative regulation is as follows: Members who have due dates for purchase of service credit that falls on a weekend or holiday must pay for the service prior to the expiration of the cost calculation, but the proposed regulation would allow persons who have due dates for purchase of service credit that falls on a weekend or holiday to be able to pay for the service on the next work day.

(d) The benefits expected from the administrative regulation are: Members who have a due date for purchase of service credit that falls on a weekend or holiday will have the next work day to complete the purchase without penalty.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented upon enactment.

June 14, 2002

(1) **105 KAR 1:340**. Rollovers and transfers of contributions in other plans.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 rollovers and transfers of contributions in other plans is KRS 16.510 to 16.652, 61.515 to 61.705, 78.520 to 78.852, 26 USC secs. 401(a)(31), 402(c), 408(d)(3), and KRS 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will extend the period of time from 5 days to 10 days that a member has to pay the balance of a lump sum service credit purchase when paying with a rollover of eligible funds.

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(c) The necessity and function of the proposed administrative regulation is as follows: Members will have 5 extra days to pay the balance of lump sum service credit purchase when paying with a rollover. Members may lose service credit when payments are not timely received with little notice of payment.

(d) The benefits expected from the administrative regulation are: Members will have the extra benefit of having 5 extra days to pay the balance of a service purchase when paying with a rollover without losing the unpaid for service credit.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented upon enactment.

June 14, 2002

(1) **105 KAR 1:350.** Collection of account without formal administration of estate.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 participation of agencies is KRS 61.703 and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will establish the requirements to be stated in affidavit for collection of account without formal administration of estate.

(c) The necessity and function of the proposed administrative regulation is as follows: The 2002 General Assembly enacted legislation allowing for unclaimed accounts of no more than \$1,000 be collected without formal administration of estate by filing an appropriate affidavit with the Kentucky Retirement Systems.

(d) The benefits expected from the administrative regulation are: The administrative regulation would allow interested persons to claim small accounts of deceased members where no action in probate was initiated.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented upon enactment.

June 14, 2002

(1) **105 KAR 1:360.** Filing of insurance applications and payment of premiums.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 22, 2002, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William P. Hanes, Esq., Executive Director, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Phone (502) 564-4646, Fax (502) 564-5656.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 participation of agencies is KRS 61.702 and 61.645(9)(e).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will establish requirements for effective dates of applications for health and hospital insurance, and payment of premiums when a recipient's benefits does not cover the cost of the insurance premium.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation would establish effective dates for having insurance applications completed and received at the retirement systems for coverage, and would establish methods to allow a recipient to pay for the balance of insurance premiums when the premium exceeds the recipient's monthly benefit.

(d) The benefits expected from the administrative regulation are: Recipients of health insurance would have a date certain by which the application for health insurance would need to be received at the retirement systems to obtain coverage, and provide a method for paying the balance of health insurance premiums.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented upon enactment.

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BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS

June 4, 2002

(1) **201 KAR 10:010**. Board personnel.

(2) The State Board of Examiners and Registration of Landscape Architects 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 July 23, 2002, at 10 a.m., at 301 East Main Street, Suite 850, 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 at least 10 days prior to July 23, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jane Gardner, Executive Director, State Board of Examiners and Registration of Landscape Architects, 301 East Main Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Jane Gardner at the above address, or by calling (859) 246-2753 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 323A.210(2)(b).

(b) The administrative regulation that the State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend 201 KAR 10:010 to specify that the executive director is responsible for records and functioning of the board office.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323A.210(1)(c) requires someone to be responsible for records of the board and administrative functioning of the board. This regulation specifies that the executive director will satisfy those responsibilities.

(d) The benefit expected from this administrative regulation is that individuals will know who is responsible for the records and administrative functioning of the board.

(e) The administrative regulation will be implemented as follows: The executive director will be given the mandate to be responsible for the records and administrative functioning of the board.

June 4, 2002

(1) **201 KAR 10:021**. Repeal of 201 KAR 10:020.

(2) The State Board of Examiners and Registration of Landscape Architects 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 July 23, 2002, at 10:10 a.m., at 301 East Main Street, Suite 850, 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 at least 10 days prior to July 23, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jane Gardner, Executive Director, State Board of Examiners and Registration of Landscape Architects, 301 EastMain Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Jane Gardner at the above address, or by calling (859) 246-2753 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 323A.210(2)(b).

(b) The administrative regulation that the State Board of Examiners and Registration of Landscape Architects intends to promulgate will not amend an existing regulation. It will serve to repeal 201 KAR 10:020.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The board needs to repeal this regulation because the subject matter is already covered in KRS Chapter 13B.

(d) The benefit expected from this administrative regulation is that the regulation will not duplicate information already contained in KRS Chapter 13B.

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

June 4, 2002

(1) **201 KAR 10:030**. Code of ethics.

(2) The State Board of Examiners and Registration of Landscape Architects 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 July 23, 2002, at 10:20 a.m., at 301 East Main Street, Suite 850, Lexington, Kentucky.

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

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jane Gardner, Executive Director, State Board of Examiners and Registration of Landscape Architects, 301 EastMain Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.
- (b) On request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Jane Gardner at the above address, or by calling (859) 246-2753 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 323A.210(2)(b).
- (b) The administrative regulation that the State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend 201 KAR 10:030 to delete language which may inhibit free speech.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323A.210 authorizes the board to adopt regulations which are not inconsistent with KRS Chapter 323A. This regulation sets forth a code of ethics which is intended to establish guidelines for landscape architects practicing in Kentucky and for the protection of the public they serve.
- (d) The benefit expected from this administrative regulation is that individuals will know what speech is protected and prohibited under the code of ethics.
- (e) The administrative regulation will be implemented as follows: Licensees will be disciplined for violations of the code of ethics.

June 4, 2002

- (1) **201 KAR 10:040.** Applications.
- (2) The State Board of Examiners and Registration of Landscape Architects 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 July 23, 2002, at 10:30 a.m., at 301 East Main Street, Suite 850, 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 at least 10 days prior to July 23, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jane Gardner, Executive Director, State Board of Examiners and Registration of Landscape Architects, 301 EastMain Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Jane Gardner at the above address, or by calling (859) 246-2753 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 323A.210(2)(b).
- (b) The administrative regulation that the State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend 201 KAR 10:040 by: Listing an application deadline for the December exam; and updating applications incorporated by reference.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323A.210 authorizes the board to adopt regulations which are not inconsistent with KRS Chapter 323A. This regulation establishes the procedures for the filing and processing of an application for registration as a landscape architect.
- (d) The benefit expected from this administrative regulation is that individuals will get more time to file an application for the December exam and the application will be updated.
- (e) The administrative regulation will be implemented as follows: A new deadline for the December exam will be given to applicants and new applications shall be made available once the regulation is approved

June 4, 2002

- (1) **201 KAR 10:050.** Fees.
- (2) The State Board of Examiners and Registration of Landscape Architects 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 July 23, 2002, at 10:40 a.m., at 301 East Main Street, Suite 850, 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 at least 10 days prior to July 23, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jane Gardner, Executive Director, State Board of Examiners and Registration of Landscape Architects, 301 EastMain Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Jane Gardner at the above address, or by calling (859) 246-2753 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 323A.060 and 323A.210(2)(b).

(b) The administrative regulation that the State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend 201 KAR 10:050 by raising some fees. The examination that landscape architect applicants take is provided by the Council of Landscape Architect Registration Boards (CLARB). The exam is divided into 5 sections and each section carries a cost that the applicant submits to the board. The board then pays CLARB for the total exams administered. CLARB's exam costs are increasing, so the board will have to raise the exam section fees accordingly. The board also wants to raise the active license and reciprocity fees slightly.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323A.060 authorizes the board to adopt regulations to establish fees. This regulation establishes fees charged by the board.

(d) The benefit expected from this administrative regulation is that individuals will know how much they will have to pay for services.

(e) The administrative regulation will be implemented as follows: Each individual shall pay the appropriate fee, as scheduled in the regulation.

June 4, 2002

(1) **201 KAR 10:060.** Renewals.

(2) The State Board of Examiners and Registration of Landscape Architects 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 July 23, 2002, at 10:50 a.m., at 301 East Main Street, Suite 850, 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 at least 10 days prior to July 23, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jane Gardner, Executive Director, State Board of Examiners and Registration of Landscape Architects, 301 EastMain Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Jane Gardner at the above address, or by calling (859) 246-2753 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 323A.100 and 323A.210(2)(b).

(b) The administrative regulation that the State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend 201 KAR 10:060 by deleting language which grants a 60 day grace period for the renewal of licenses. Since a renewal notice is sent as a reminder by May 1 of each year and renewals are due by June 30th, the board feels that an additional period of 60 days (through September 1) allows an individual to practice too long without a license

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323A.100 requires all landscape architects to renew on an annual basis. This regulation the renewal procedure and deadline.

(d) The benefit expected from this administrative regulation is that individuals will know when they must renew and the public will be protected by more effective licensure of landscape architects.

(e) The administrative regulation will be implemented as follows: Each licensee shall renew his license by June 30 of each year.

June 4, 2002

(1) **201 KAR 10:080.** Continuing education.

(2) The State Board of Examiners and Registration of Landscape Architects 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 July 23, 2002, at 11 a.m., at 301 East Main Street, Suite 850, 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 at least 10 days prior to July 23, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jane Gardner, Executive Director, State Board of Examiners and Registration of Landscape Architects, 301 EastMain Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2753, fax (859) 246-2754.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Jane Gardner at the above address, or by calling (859) 246-2753 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 323A.210(2)(a).

(b) The administrative regulation that the State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend 201 KAR 10:080 by deleting redundant language and updating forms incorporated by reference.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323A.210(2)(a) authorizes the board to promulgate regulations to establish a program of continuing education for licensees. This regulation establishes continuing education requirements.

(d) The benefit expected from this administrative regulation is that the regulation will be easier to read and understand.

(e) The administrative regulation will be implemented as follows: Each licensee shall abide by the requirements as a condition of initial or continued licensure.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY

June 4, 2002

(1) **201 KAR 26:160.** Fee schedule. This proposed administrative regulation amends the requirements for payment of the application for licensure fee and renewal fees.

(2) The Kentucky Board of Examiners of Psychology 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 July 24, 2002, at 10 a.m., Kentucky Board of Examiners of Psychology, Division of Occupations and Professions, 911 Leawood 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 calendar days prior to July 24, 2002, 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, Director, Division of Occupations and Professions, Executive Director, Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Phone (502) 564-3296, ext. 224, 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 and administrative regulation government a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy L. Black, 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 the fees is KRS 319.050(2)(a), 319.064(1)(a) and 319.071(1).

(b) The proposed administrative regulation will amend the fee for initial application fee for a credential and the renewal fee for credential holders of the Kentucky Board of Examiners of Psychology.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will set forth in detail all fees charged by the board.

(d) The benefit expected from this administration regulation is increased clarity of the regulation and statutes pertaining to fees, enable board review of applications for licensure and renewal, and pursue appropriate disciplinary action when necessary.

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

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

June 14, 2002

(1) **301 KAR 1:015.** Boats and motor restrictions.

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 wild turkey hunting is KRS 235.280.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to limit the size of boats and motors on small lakes for safety

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reasons and to minimize interference with other users.

(d) The benefits expected from the administrative regulation is to ensure boating safety on Kentucky lakes.

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

June 13, 2002

(1) **301 KAR 1:075.** Giggling, grabbing or snagging, tickling and noodling.

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 wildlife rehabilitation is KRS 150.170, 150.175, 150.360, 150.440 and 150.445.

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

(c) The necessity and function of the proposed administrative regulation is to update the administrative regulation due to additions and deletions of trout streams.

(d) The benefits expected from the administrative regulation are to have an updated administrative regulation that complies with the Kentucky Trout Waters brochure.

(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.

June 13, 2002

(1) **301 KAR 1:085.** Mussel shell harvesting.

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 wild turkey hunting is KRS 150.025(1), 150.170, 150.175 and 150.520.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to manage the mussel population.

(d) The benefits expected from the administrative regulation is to prevent the overharvest of mussels.

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

June 13, 2002

(1) **301 KAR 1:122.** Importation, possession; live fish.

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 wild turkey hunting is KRS 150.025(1).

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to allow certain banned aquatic species to be imported into Kentucky for legitimate scientific or educational purposes.

(d) The benefits expected from the administrative regulation is to allow aquariums and other legitimate facilities to hold banned aquatic species.

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

June 13, 2002

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

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 wild turkey hunting is KRS 235.025.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to establish the procedures for the taking of live bait and restrict use to personal only.

(d) The benefit expected from the administrative regulation is effective management of fish species.

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

June 13, 2002

(1) **301 KAR 1:150.** Waters open to commercial fishing.

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 wild turkey hunting is KRS 150.025.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to clarify the areas which are closed to commercial fishing.

(d) The benefits expected from the administrative regulation is to ensure effective management of fish species.

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

June 13, 2002

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(1) **301 KAR 1:201**. Fishing 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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 wild turkey hunting is KRS 150.025(1) and 150.470.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to remove the statewide size limit of 12 inches on coosa bass.

(d) The benefits expected from the administrative regulation is to effectively manage the coosa bass population in the Commonwealth.

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

May 24, 2002

(1) **301 KAR 2:041**. Shooting preserves.

(2) The Department of Fish and Wildlife Resources intends to promulgate an amendment to the existing 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 July 22, 2002 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601; phone (502) 564-3400, fax (502) 564-0506.

(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 of an administrative regulation governing the holding of wildlife is KRS 150.025(1), 150.180(6) and 150.280.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation establishes new criteria for importing and holding cervids in shooting preserves in Kentucky.

(d) The benefit expected from the administrative regulation is to prevent the introduction and spread of the chronic wasting disease in Kentucky.

(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.

May 24, 2002

(1) **301 KAR 2:081**. Pet and propagation permits.

(2) The Department of Fish and Wildlife Resources intends to promulgate an amendment to the existing 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 July 22, 2002 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601; phone (502) 564-3400, fax (502) 564-0506.

(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.

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(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 an administrative regulation governing the holding of wildlife is KRS 150.025(1), 150.180(6) and 150.280.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation establishes new criteria for importing and holding cervids in Kentucky.

(d) The benefit expected from the administrative regulation is to prevent the introduction and spread of the chronic wasting disease in Kentucky.

(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.

May 24, 2002

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

(2) The Department of Fish and Wildlife Resources intends to promulgate an amendment to the existing 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 July 22, 2002 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601; phone (502) 564-3400, fax (502) 564-0506.

(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 of an administrative regulation governing the holding of wildlife is KRS 150.025(1), 150.180(6) and 150.280.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation establishes new criteria for importing and holding cervids in Kentucky.

(d) The benefit expected from the administrative regulation is to prevent the introduction and spread of the chronic wasting disease in Kentucky.

(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.

May 24, 2002

(1) **301 KAR 2:083.** Transportation and holding of captive cervids.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 22, 2002 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601; phone (502) 564-3400, fax (502) 564-0506.

(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 of an administrative regulation governing the holding of wildlife is KRS 150.025(1), 150.180(6) and 150.280.

(b) The administrative regulation that the department intends to promulgate is a new administrative regulation.

(c) The necessity and function of the proposed administrative regulation establishes new criteria for importing and holding cervids in Kentucky.

(d) The benefit expected from the administrative regulation is to prevent the introduction and spread of the chronic wasting disease in Kentucky.

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

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May 30, 2002

(1) **301 KAR 2:084.** Importation of game birds.

(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 July 22, 2002 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601; Phone (502) 564-3400, FAX (502) 564-0506.

(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 of an administrative regulation governing importation of game birds is KRS 150.025(1) and 150.180(6).

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation establishes the procedure for obtaining a transportation permit for the importation of certain game birds species into Kentucky.

(d) The benefit expected from the administrative regulation is to prevent the introduction and spread of the avian influenza virus into Kentucky.

(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.

June 13, 2002

(1) **301 KAR 2:111.** Deer and turkey hunting on federal areas.

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 of this administrative regulation governing deer hunting is KRS 150.025(1).

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to manage the deer herds and turkey flocks on federal areas.

(d) The benefits expected from the administrative regulation are to maintain quality deer and turkey herds and flocks on federal areas.

(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.

June 13, 2002

(1) **301 KAR 3:015.** Shooting ranges on wildlife management areas.

(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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 admin-

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istrative 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 governing deer hunting is KRS 150.025(1) and 150.620.

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to establish procedures to ensure the safe operation of department-owned shooting ranges on wildlife management areas.

(d) The benefits expected from the administrative regulation are to provide self-service areas for trap shooting on Central and Lloyd wildlife management areas for more trap shooting opportunities.

(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.

June 13, 2002

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

(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 July 22, 2002 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 the management of wildlife and hunting is KRS 150.025(1).

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to establish reasonable accommodations for those persons with mobility-impairments.

(d) The benefits expected from the administrative regulation are to ensure more equal opportunity for mobility-impaired individuals to participate in wildlife recreation activities.

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

June 13, 2002

(1) **301 KAR 3:030.** Year-round season for some birds and animals.

(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 July 22, 2002 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

(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 the management of wildlife management areas is KRS 150.025(1).

(b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is to establish a year-round hunting season for some species.

(d) The benefits expected from the administrative regulation are to manage species of wildlife in Kentucky.

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

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June 13, 2002

- (1) **301 KAR 5:020**. License agent requirements and responsibilities.
- (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 July 22, 2002 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 July 22, 2002 the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.
- (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 licensing KRS 150.195.
 - (b) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
 - (c) The necessity and function of the proposed administrative regulation is to provide a notification requirement when license agents cease operating.
 - (d) The benefit expected from the administrative regulation is an efficient process for issuing licenses and reporting license sales.
 - (e) The administrative regulation will be implemented as follows: Its provisions will be distributed to license agents and implemented by the Division of Licensing.

DEPARTMENT OF AGRICULTURE

June 12, 2002.

- (1) **302 KAR 5:041**, Repeal of 302 KAR 5:040.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Monday, July 22, 2002, at 9:30 a.m. at the Department of Agriculture, Room 188, Capitol Annex, 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 is not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.
- (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 a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a 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 Department of Agriculture 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 302 KAR 5:041 is KRS Chapter 258.
 - (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will repeal 302 KAR 5:040, Evaluation table.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
 - (d) The benefits expected from the proposed administrative regulation are: To repeal an administrative regulation that is no longer necessary.
 - (e) The administrative regulation will be implemented as follows: Administrative regulation 302 KAR 5:040 will be repealed; amounts to be paid by individuals applying for reimbursement from the livestock fund will be prescribed by statute.

May 24, 2002

- (1) **302 KAR 20:040**. Entry into Kentucky.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Monday, July 22, 2002 at 10 a.m. in the Department of Agriculture, Room 188, Capitol Annex, 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 is not received from the required number of people at least ten days prior to July 22, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.
- (b) On a request for a public hearing, a person shall state:

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

(6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a 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 Department of Agriculture 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 Chapter 13A and 257.030.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will establish criteria and health requirements necessary for entry of livestock and other animals into Kentucky.

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

(d) The benefits expected from the proposed administrative regulation are: Regulate entry into Kentucky of cervids and prevent the introduction of disease.

(e) The administrative regulation will be implemented as follows: This administrative regulation establishes requirements and procedures necessary to regulate entry of cervids into Kentucky.

May 24, 2002

(1) **302 KAR 20:065**. Sale and exhibition of Kentucky origin livestock in Kentucky.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, July 22, 2002 at 10 a.m. in the Department of Agriculture, Room 188, Capitol Annex, 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 is not received from the required number of people at least ten days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

(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 a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a 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 Department of Agriculture 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 Chapter 13A and 257.030.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will establish criteria and health requirements necessary for sale and exhibition of Kentucky origin livestock in Kentucky.

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

(d) The benefits expected from the proposed administrative regulation are: To prevent introduction or spread of disease.

(e) The administrative regulation will be implemented as follows: This administrative regulation establishes requirements and procedures necessary to regulate sale and exhibition of livestock in Kentucky.

May 24, 2002

(1) **302 KAR 20:066**. Chronic wasting disease surveillance in captive cervids.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, July 22, 2002 at 10 a.m. in the Department of Agriculture, Room 188, Capitol Annex, 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 is not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, fax (502) 564-5016.

(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 a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a 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 Department of Agriculture 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 Chapter 13A, 257.030, and 2002 Ky. Acts ch. 88.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will establish criteria and health requirements necessary to prevent introduction of chronic wasting disease, develop a herd monitoring system, and establish requirements for intrastate movement of cervids.

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

(d) The benefits expected from the proposed administrative regulation are: Prevent the introduction of chronic wasting disease into Kentucky.

(e) The administrative regulation will be implemented as follows: This administrative regulation establishes requirements and procedures necessary to prevent introduction of chronic wasting disease into Kentucky and will protect the state's livestock industry.

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May 21, 2002.

(1) **302 KAR 34:030**. License and records required.

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

(3) A public hearing to receive oral and written comments has been scheduled for Friday, July 22, 2002, at 9 a.m. at the Department of Agriculture, Room 188, Capitol Annex, 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 is not received from the required number of people at least ten days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

(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 a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a 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 Department of Agriculture 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 302 KAR 34:030 is KRS 251.700.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 34:030, License and records required. It will establish recordkeeping requirements for farmer-produced grain from point of origin to delivery

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

(d) The benefits expected from the proposed administrative regulation are: Establishes a less error-prone recordkeeping system to track grain from the time it is loaded at the farm until it reaches the point of destination.

(e) The administrative regulation will be implemented as follows: All grain producers, grain dealers, and their authorized agents, will be required to comply with recordkeeping requirements of this administrative regulation.

June 13, 2002.

(1) **302 KAR 78:011**, Repeal of 302 KAR 78:010.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, July 22, 2002, at 9:30 a.m. at the Department of Agriculture, Room 188, Capitol Annex, 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 is not received from the required number of people at least 10 days prior to July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

(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 a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a 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 Department of Agriculture 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 302 KAR 78:011 is KRS Chapter 363.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will repeal 302 KAR 78:010, Tobacco sales to persons under the age of eighteen (18) years.

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

(d) The benefits expected from the proposed administrative regulation are: To repeal an administrative regulation that is no longer necessary.

(e) The administrative regulation will be implemented as follows: Administrative regulation 302 KAR 78:010 will be repealed; responsibilities have been transferred to another state agency.

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

June 14, 2002

(1) **401 KAR 47:095**. The subject matter of this administrative regulation is the collection, submittal, and reporting of the environmental remediation fee and other administrative procedures necessary to implement HB 174 (2002).

(2) The Division of Waste Management 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 July 30, 2002, at 10 a.m. (Eastern Time), in the Capital Plaza Tower Auditorium, Frankfort, Kentucky. The Division of Waste Management will consider all oral and written comments from any interested person at the public hearing.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to July 30, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an ad-

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ministrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to July 30, 2002, the public hearing will be canceled.

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

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

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Michael Mullins, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, fax (502) 564-3492, phone (502) 564-6716, ext. 282.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.10-100, 224.10-105, and HB 174 (2002).

(b) The administrative regulation that the Division of Waste Management intends to promulgate will not amend an existing regulation. The proposed administrative regulation will establish procedures relating to the environmental remediation fee and other administrative matters established by HB 174 (2002).

(c) The necessity and function of the proposed administrative regulation is as follows: HB 174 establishes an environmental remediation fee and requires the Natural Resources and Environmental Protection Cabinet to apply the fee to certain environmental remediation activities.

(d) The expected benefit from this administrative regulation is a consistent approach to collection, submittal and reporting of the environmental remediation fee and other administrative matters.

(e) The proposed administrative regulation will be implemented as follows: Beginning January 1, 2003, the environmental remediation fee will be assessed and the money collected shall be deposited into the Kentucky Pride Fund for the uses mandated by HB 174 (2002).

JUSTICE CABINET Kentucky Law Enforcement Council

June 5, 2002

(1) **503 KAR 1:160.** Department of Criminal Justice Training - Kentucky Police Corps basic training: graduation requirements; records.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 22, 2002, at 9 a.m., in the Commissioner's Conference Room, Funderburk Building, Richmond, Kentucky 40475-3102.

(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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephanie C. Bingham, Funderburk Building, Richmond, Kentucky 40475-3102, phone (859) 622-5897, fax (859) 622-3162.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(1)(c) and (g).

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will create 503 KAR 1:160, as follows:

1. Establish graduation requirements for the Department of Criminal Justice Training - Kentucky Police Corps, including physical training requirements, and testing requirements for the course's 3 clearly defined training areas;
2. Establish a policy for absenteeism;
3. Establish policies related to course failures, and leaves of absence;
4. Establish procedures for testing;
5. Establish criteria for the maintenance of Department of Criminal Justice Training - Kentucky Police Corps records.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330(1)(c) and (g) authorize the Kentucky Law Enforcement Council to prescribe qualifications for attendance of law enforcement training course and to promulgate administrative regulations. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training - Kentucky Police Corps basic training course, which fulfills the requirements for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of the resulting basic training records.

(d) The benefits expected from this administrative regulation are: To codify the physical, course, and graduation requirements for the participants of the Department of Criminal Justice Training - Kentucky Police Corps Program. The implementation of the Department of Criminal Justice Training - Kentucky Police Corps will provide a college education to worthy applicants, as well as provide additional police officers for needy communities.

(e) This administrative regulation will be implemented as follows: The Department of Criminal Justice Training and Kentucky Police Corps recruits will comply with the graduation requirements as established in this policy.

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June 5, 2002

(1) **503 KAR 3:090.** Department of Criminal Justice Training - Kentucky Police Corps.

(2) The Department of Criminal Justice Training 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 July 22, 2002, at 9 a.m., in the Commissioner's Conference Room, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3102.

(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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephanie C. Bingham, Funderburk Building, Richmond, Kentucky 40475-3102, phone (859) 622-5897, fax (859) 622-3162.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15A.070(1) and (5) and 42 USC 14094, 14096, and 14099.

(b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will create 503 KAR 3:090, as follows:

1. Establish the Department of Criminal Justice Training - Kentucky Police Corps Program;
2. Establish a policy for the selection and screening of participants;
3. Establish policies providing for the assignment of participants to particular geographical regions;
4. Establish policies regarding the Department to which participants are assigned; and
5. Establish policies for the removal of participants in the Department of Criminal Justice Training - Kentucky Police Corps Program.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 14094(a) requires a state desiring to participate in the Police Corps Program to designate a lead agency to submit and administer the program in the state. Pursuant to KRS 15A.070(1), the Kentucky General Assembly authorized the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

(d) The benefits expected from this administrative regulation are: To establish the Department of Criminal Justice Training - Kentucky Police Corps Program, the application, selection, and placement criteria for participants.

(e) This administrative regulation will be implemented as follows: The Department of Criminal Justice Training and participating Police Corps recruits will comply with the Police Corps Program requirements as established in this policy.

June 5, 2002

(1) **503 KAR 3:100.** Department of Criminal Justice Training - Kentucky Police Corps basic training course cadet conduct requirements; procedures and penalties.

(2) The Department of Criminal Justice Training 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 July 22, 2002, at 9 a.m., in the Commissioner's Conference Room, Funderburk Building, Richmond, Kentucky 40475-3102.

(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 July 22, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephanie C. Bingham, Funderburk Building, Richmond, Kentucky 40475-3102, phone (859) 622-5897, fax (859) 622-3162.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15A.070(1) and (5).

(b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will create 503 KAR 3:100, as follows:

1. Establish conduct, dress, and grooming requirements for members of the Department of Criminal Justice Training - Kentucky Police Corps;
2. Establish dormitory requirements;
3. Establish an honor code for Department of Criminal Justice Training - Kentucky Police Corps cadets;
4. Establish a policy for notification of sponsoring police agencies in the event of cadet rule violations;
5. Establish disciplinary procedures including penalties for misconduct.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.070(1) and (5) authorize the Department

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of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes the conduct requirements for cadets attending the Department of Criminal Justice Training - Kentucky Police Corps basic training course, prescribes procedures for disciplinary action, and sets penalties.

(d) The benefits expected from this administrative regulation are: To codify the conduct requirements and disciplinary procedures for the participants of the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

(e) This administrative regulation will be implemented as follows: The Department of Criminal Justice Training and cadets will comply with conduct and disciplinary procedures as established in this policy.

Department of Juvenile Justice

June 10, 2002

(1) **505 KAR 1:041**, Repeal of 505 KAR 1:040.

(2) The Department of Juvenile Justice 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 July 22, 2002, at 10 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky, 40601, phone (502) 573-2738, fax (502) 573-0836.

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

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:041, Repeal of 505 KAR 1:040, is KRS 15A.065, 15A.160, 15A.210, 605.150, 635 et seq., 640.120 and 645.250.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will repeal 505 KAR 1:040, Department of Juvenile Justice Policy and Procedures Manual.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is promulgated to repeal 505 KAR 1:040, Department of Juvenile Justice Policy and Procedures Manual, which will be divided into 5 new administrative regulations in order to facilitate the review and future amendment and update of policies and procedures utilized by the Department of Juvenile Justice in administering a statewide social services program for the treatment of juvenile delinquency.

(d) The benefits expected from the administrative regulation are: The department will have improved and simplified the review and future amendment and update of policies and procedures utilized by the department in administering a statewide social services program for the treatment of juvenile delinquency.

(e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures established by the regulations promulgated to replace this one.

June 10, 2002

(1) **505 KAR 1:100**, Department of Juvenile Justice Policies and Procedures Manual: admissions.

(2) The Department of Juvenile Justice 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 July 22, 2002, at 10 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky, 40601, phone (502) 573-2738, fax (502) 573-0836.

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

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:100, Department of Juvenile Justice Policies and Procedures Manual: admissions, is KRS 15A.065, 15A.160, 15A.210, 605.150, 635 et seq., 640.120 and 645.250.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will partially replace 505 KAR 1:040. It will amend existing policies and procedures of the Department of Juvenile Justice as well as implementing new policies and procedures to improve conditions and services for youth housed in residential treatment facilities and served by the Department of Juvenile Justice.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is promulgated to incorporate into regulatory form, by reference, and update materials used by the department in the implementation of a statewide social service program for the treatment of juvenile delinquency.

(d) The benefits expected from the administrative regulation are: The department will have continued to establish regulatory authority for the current policies and procedures relating to the services offered to youths adjudicated as delinquent in district court, and will have continued to improve conditions for youth housed in residential treatment facilities.

(e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures established by this

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regulation.

June 10, 2002

(1) **505 KAR 1:110**, Department of Juvenile Justice Policies and Procedures Manual: program services.

(2) The Department of Juvenile Justice 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 July 22, 2002, at 10 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky, 40601, phone (502) 573-2738, fax (502) 573-0836.

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:110, Department of Juvenile Justice Policies and Procedures Manual: program services, is KRS 15A.065, 15A.160, 15A.210, 605.150, 635 et seq., 640.120 and 645.250.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will partially replace 505 KAR 1:040. It will not amend existing policies and procedures of the Department of Juvenile Justice but it will facilitate the future amendment of policies and procedures relating to the conditions and services for youth housed in residential treatment facilities and served by the Department of Juvenile Justice.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the department in the implementation of a statewide social service program for the treatment of juvenile delinquency.

(d) The benefits expected from the administrative regulation are: The department will have continued to establish regulatory authority for the current policies and procedures relating to the services offered to youths adjudicated as delinquent in district court, and will have continued to improve conditions for youth housed in residential treatment facilities.

(e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures established by this regulation.

June 10, 2002

(1) **505 KAR 1:120**, Department of Juvenile Justice Policies and Procedures Manual: health and safety services.

(2) The Department of Juvenile Justice 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 July 22, 2002, at 10 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, 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 July 22, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky, 40601, phone (502) 573-2738, fax (502) 573-0836.

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

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

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

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

(7)(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:120, Department of Juvenile Justice Policies and Procedures Manual: health and safety services, is KRS 15A.065, 15A.160, 15A.210, 605.150, 635 et seq., 640.120 and 645.250.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will partially replace 505 KAR 1:040. It will not amend existing policies and procedures of the Department of Juvenile Justice but it will facilitate the future amendment of policies and procedures relating to the conditions and services for youth housed in residential treatment facilities and served by the Department of Juvenile Justice.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the department in the implementation of a statewide social service program for the treatment of juvenile delinquency.

(d) The benefits expected from the administrative regulation are: The department will have continued to establish regulatory authority for the current policies and procedures relating to the services offered to youths adjudicated as delinquent in district court, and will have continued to improve conditions for youth housed in residential treatment facilities.

(e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures established by this regulation.

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June 10, 2002

- (1) **505 KAR 1:130**, Department of Juvenile Justice Policies and Procedures Manual: juvenile services in community.
- (2) The Department of Juvenile Justice 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 July 22, 2002, at 10 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, 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 July 22, 2002, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky, 40601, phone (502) 573-2738, fax (502) 573-0836.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Juvenile Justice at the address listed above.
- (7)(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:130, Department of Juvenile Justice Policies and Procedures Manual: juvenile services in community, is KRS 15A.065, 15A.160, 15A.210, 605.150, 635 et seq., 640.120 and 645.250.
- (b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will partially replace 505 KAR 1:040. It will not amend existing policies and procedures of the Department of Juvenile Justice but it will facilitate the review and amendment of policies and procedures in the future. These policies and procedures relate to services provided by the department to youths not placed in residential treatment facilities.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the department in the implementation of a statewide social service program for the treatment of juvenile delinquency.
- (d) The benefits expected from the administrative regulation are: The department will have continued to establish regulatory authority for the current policies and procedures relating to the services offered to youths adjudicated as delinquent in district court.
- (e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures established by this regulation.

June 10, 2002

- (1) **505 KAR 1:140**, Department of Juvenile Justice Policies and Procedures Manual: detention services.
- (2) The Department of Juvenile Justice 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 July 22, 2002, at 10 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, 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 July 22, 2002, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky, 40601, phone (502) 573-2738, fax (502) 573-0836.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Juvenile Justice at the address listed above.
- (7)(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:140, Department of Juvenile Justice Policies and Procedures Manual: detention services, is KRS 15A.065, 15A.160, 15A.210, 605.150, 635 et seq., 640.120 and 645.250.
- (b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will partially replace 505 KAR 1:040. It will not amend existing policies and procedures of the Department of Juvenile Justice but it will facilitate the future amendment of policies and procedures relating to the conditions and services for youth housed in detention facilities operated by the Department of Juvenile Justice.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the department in the operation of juvenile detention facilities.
- (d) The benefits expected from the administrative regulation are: The department will have continued to establish regulatory authority for the current policies and procedures relating to the services offered to youths ordered detained in juvenile detention facilities operated by the department, and will have continued to improve conditions for youth housed in juvenile detention facilities.
- (e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures established by this regulation.

TRANSPORTATION CABINET

June 14, 2002

- (1) **600 KAR 6:040**, Prequalification of firms for professional engineering or related services.
- (2) The Kentucky Transportation Cabinet intends to promulgate an amendment to 600 KAR 6:040 that will update materials incorporated into this regulation.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 29, 2002,

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10 a.m. local prevailing time, State Office Building, 10th Floor, Executive Conference Room, 501 High Street, 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, July 19, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Susan Chaplin at: Phone (502) 564-7650, fax (502) 564-5238, or e-mail Susan.Chaplin@mail.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 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 Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) KRS 45A.807 provides statutory authority for this regulation.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will update the incorporated materials.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the procedure and standards for the prequalification of firms for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

(d) The benefits expected from the administrative regulation are to provide current forms and standards for prequalification of firms.

(e) This amendment to administrative regulation will be implemented 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 Susan Chaplin at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

June 14, 2002

(1) **600 KAR 6:060**, Professional engineering service selection committee.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to this administrative regulation that will update incorporated materials and streamline the selection process for professional engineering firms by making a second meeting of the selection committee optional.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 29, 2002, 10 a.m. local prevailing time, State Office Building, 10th Floor, Executive Conference Room, 501 High Street, 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, July 19, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Susan Chaplin at: Phone (502) 564-7650, fax (502) 564-5238, or e-mail Susan.Chaplin@mail.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 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 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 relating to prequalification of professional engineering firms is KRS 45A.807.

(b) The Transportation Cabinet intends to promulgate an amendment to this regulation that will update the incorporated materials and make the second meeting of the selection committee optional.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835. This administrative regulation establishes the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

(d) The amendment will benefit all affected parties by providing a streamlined and updated selection process.

(e) This amendment to administrative regulation will be implemented 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 Susan Chaplin at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

June 14, 2002

(1) **600 KAR 6:070**, Contracting for professional engineering or related services.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to 600 KAR 6:070.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 29, 2002, 10 a.m. local prevailing time, State Office Building, 10th Floor, Executive Conference Room, 501 High Street, 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, July 19, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Susan Chaplin at: Phone (502) 564-7650, fax (502) 564-5238, or e-mail

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Susan.Chaplin@mail.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 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 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 relating to professional engineering services is KRS 45A.838.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will tie rates for expense reimbursement in professional engineering contracts to the state rates for similar expenses and adjust salary caps for partners and nonpartners of the engineering firm.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering services pursuant to KRS 45A.800 to 45A.835. This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

(d) The benefits expected from the administrative regulation are to provide reasonable rates of reimbursement for expenses related to professional services contracts.

(e) This amendment to administrative regulation will be implemented 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 Susan Chaplin at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

June 14, 2002

(1) **600 KAR 6:080**, Financial records and audits of firms.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to 600 KAR 6:080.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 29, 2002, 10 a.m. local prevailing time, State Office Building, 10th Floor, Executive Conference Room, 501 High Street, 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, July 19, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Susan Chaplin at: Phone (502) 564-7650, fax (502) 564-5238, or e-mail Susan.Chaplin@mail.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 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 Transportation Cabinet at the address listed above.

(7)(a) KRS 45A.802 is the statutory authority for the promulgation of an administrative regulation relating to financial records and audits of firms providing engineering and related services on contract with the Transportation Cabinet.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will revise compensation caps for partners and nonpartners of these firms, update incorporated materials, and revise the audit review committee membership by adding the Executive Director of the Office of Policy and Budget.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 45A.807(2) requires the Transportation Cabinet to promulgate administrative regulations to implement its procurement of engineering or related services pursuant to KRS 45A.800 to 45A.835. The U.S. Department of Transportation requires all engineering or related projects which it funds to be subject to the cost principles or accounting standards established in 48 CFR 30 and 31. This administrative regulation establishes the audit methodology to be used by a cabinet auditor for an engineering or related service agreement entered into by the cabinet pursuant to KRS 45A.800 to 45A.835; establishes the requirements for keeping financial records; and requires all firms contracting with or prequalified by the cabinet to comply with the federal regulations.

(d) The benefits expected from the administrative regulation are to provide consistency with other existing regulations and incorporate updated forms.

(e) This amendment to administrative regulation will be implemented 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 Susan Chaplin at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

KENTUCKY BOARD OF EDUCATION

June 12, 2002

(1) **701 KAR 5:090**, Teacher disciplinary hearings.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 26, 2002, 10 a.m. in the First Floor Conference Room, 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.

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ing.

(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 July 26, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, Deputy Commissioner, Office of Legal and Legislative 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 156.070 and 161.790.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 701 KAR 5:090.

(c) The necessity, function, and conformity of the proposed administrative regulation is KRS 161.790 establishes administrative and hearing procedures with respect to the tribunal process and requires the Kentucky Board of Education to identify the required training for tribunal member designated to serve as tribunal members in an ongoing basis.

(d) To ensure that local school district certified employee adverse employment decisions are justified, not arbitrary, and due process is provided.

(e) The administrative regulation will be implemented as follows: The Attorney General's Office is available to provide 1/2 day training on the hearing process, the role of the tribunal, the role of the hearing officer, how to determine facts, fundamental fairness, the law on teacher disciplinary actions, and the deliberative process to the members of the tribunal pool.

June 12, 2002

(1) **702 KAR 3:250**, Preschool grant allocations

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 26, 2002, 10 a.m. in the 1st Floor Conference Room, Capital Plaza, 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 July 26, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, Deputy Commissioner, 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 156.070, 156.160, 157.226, and 157.3175.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 3:250.

(c) The necessity, function, and conformity of the proposed amended administrative regulation is to provide guidance as to distribution and use of preschool state funds for local school districts and to enable more flexibility.

(d) The benefits expected from this administrative regulation are to simplify and provide flexibility as to preschool state funds provided to local school districts.

(e) The administrative regulation will be implemented as follows: It will be provided to all local school districts and technical assistance will be offered.

June 12, 2002

(1) **703 KAR 5:070**. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 26, 2002, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 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 July 26, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, Deputy Commissioner, 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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority is KRS 156.070, 158.6453, and 158.6455.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 703 KAR 5:070.

(c) The necessity, function, and conformity of the proposed amended administrative regulation is to provide guidance on inclusion of special populations in CATS, including complying with federal law (Reauthorization of the Elementary and Secondary Education Act) as to students with limited English proficiency.

(d) The benefit expected from this amended administrative regulation is to comply with federal legislation.

(e) The administrative regulation will be implemented as follows: The provisions of the amended administrative regulation will be provided to all local school districts, and the Department of Education will provide technical assistance to help local school districts in serving and assessing students with limited English proficiency.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

June 6, 2002

(1) **806 KAR 17:221**, Repeal of 806 KAR 17:220.

(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 July 23, 2002 at 9 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Elizabeth A. Johnson, Kentucky Department of Insurance, PO Box 517, Frankfort, Kentucky 40602, phone (502) 564-6032, fax (502) 564-1456.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 13A.310.

(b) The administrative regulation that the department intends to promulgate will repeal 806 KAR 17:220, Approval criteria and requirements for reentry into the Kentucky health insurance market.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 17:220, Approval criteria and requirements for reentry into the Kentucky health insurance market.

(d) The benefits expected from the administrative regulation are as follows: The Department of Insurance is repealing 806 KAR 17:220 because KRS 304.17A-260 was repealed by 2002 Ky. Acts ch. 351, sec. 18.

(e) This administrative regulation will be implemented as follows: On the effective date of this administrative regulation, 806 KAR 17:220 shall be repealed.

May 23, 2002

(1) **806 KAR 40:020**, Charitable health care provider registration.

(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 July 26, 2002, at 9:30 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

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

(b) If requests 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 July 26, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Vicky C. Horn or Melea Kelch, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, phone (502) 564-6032, fax (502) 564-1456.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.40-075.

(b) The administrative regulation that the department intends to promulgate will amend 806 KAR 40:020, Charitable health care provider registration. KRS 304.40-075 was amended by HB 391 during the last legislative session. The statute requires the Department of Insurance to

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promulgate regulations concerning the type of documentation to be provided to the department in order to determine the amount of reimbursement owed to the charitable health care provider for the purchase of professional liability insurance. In addition, the department would like to incorporate its call for necessary data reference.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 requires the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of this code. KRS 304.40-075 requires this administrative regulation to define documentation to be provided by charitable health care providers in order for them to receive their reimbursements.

(d) The benefits expected from the administrative regulation are as follows: This administrative regulation will assist the Department of Insurance to verify the types of insurance being sold to charitable health care providers and better determine the amount of reimbursement owed to them.

(e) The administrative regulation will be implemented as follows: The department already requests data on an annual basis from all carriers who write medical professional liability insurance in order to comply with the KRS 304.40-075 requirement that the commissioner retrospectively review on an annual basis the premiums paid as opposed to the expenses incurred by the insurers covering these types of risks. The department is amending this regulation in order to incorporate the form "Medical Professional Liability Insurance Annual Call for Data", CHP-2A P & C 07 2000, to assure uniformity in reporting data. Additionally the documents necessary for the Department of Insurance to determine reimbursements to charitable health care providers will be described.

Department of Housing, Buildings and Construction

June 14, 2002

(1) **815 KAR 10:060**, Kentucky Standards of Safety/1999 Edition.

(2) The department 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., EDT, on Monday, July 22, 2002, in the Department's Conference Room at 101 Sea Hero Road, Suite #100, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to July 22, 2002, 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 Janet Hall, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite #100, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057.

(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 227.300.

(b) The department intends to amend 815 KAR 10:060 by amending and updating the incorporated "Report of Inspection" and incorporating additional NFPA Referenced Standards in Section 9.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will update fire safety standards and repeal the 1996 Kentucky Fire Prevention Code and will continue to be based upon nationally recognized standards contained in various codes developed by the National Fire Protection Association and the American National Standard Safety Requirements for the storage and handling of anhydrous ammonia and to provide a reasonable degree of safety for human life against emergencies such as fire and explosion. These standards shall be enforceable by the State Fire Marshal and local authorities.

(d) The benefits expected from this administrative regulation are: Continued protection for the public by having reviewed and revised the existing standards to guide the state and local authorities in assessing minimum safety requirements for human life and property.

(e) This administrative regulation will be implemented by Division of Fire Prevention Inspectors and where adopted by local ordinance, by fire code officials statewide.

June 14, 2002

(1) **815 KAR 25:090**, Site preparation and installation minimum requirements.

(2) The department 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., EDT, on Monday, July 22, 2002, in the Department's Conference Room at 101 Sea Hero Road, Suite #100, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to July 22, 2002, 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 Janet Hall, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite #100, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057.

(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 227.300.

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(b) The department intends to amend this administrative regulation by amending the existing incorporated forms; creating a new form, "Request for Inspection" in Section 4 and amending Section 3 to delete language that conflicts with KRS 227.590.

(c) The necessity and function of the proposed administrative regulation is as follows: Kentucky Revised Statutes require the Manufactured Home Board to establish and the State Fire Marshal's Office to enforce administrative regulations governing standards for the manufacture and sale of manufactured homes. This administrative regulation establishes criteria for making manufactured home installations, site preparation, foundation construction and anchoring required by the manufacturer's instructions.

(d) The benefits expected from this administrative regulation are: This administrative regulation is intended to assure safety for owners and occupants of new and used manufactured homes.

(e) This administrative regulation will be implemented by the State Fire Marshal's Office of Manufactured Housing Inspectors.

June 14, 2002

(1) **815 KAR 35:030**, Kentucky certification of electrical contractors.

(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., EDT, on Monday, July 22, 2002, in the Department's Conference Room at 101 Sea Hero Road, Suite #100, 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 July 22, 2002, 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 Janet Hall, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite #100, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.4901.

(b) The department intends to amend 815 KAR 35:030 to define "Standard Master Electrical Contractor Exam" to mean the most current version of the exam.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 227.4901 requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary to specify the length of time for which an examination will be valid to qualify for state certification.

(d) The benefits expected from this administrative regulation are: The examination based upon current codes keeps contractor qualifications up to date.

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

CABINET FOR HEALTH SERVICES Department for Public Health

June 15, 2002

(1) **902 KAR 8:150**, Board of health requirements.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 2002 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 July 31, 2002 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of General 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 902 KAR 8:150 is KRS 194A.050 and 211.025.

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(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 8:150.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 212 (new section) requires the governing board of each local, district and independent health department to have a written policy concerning the distribution of nonscheduled legend drugs by an advanced registered nurse practitioner or a registered nurse from a list of drugs prepared by the Commissioner of the Department for Public Health. In addition, it requires the membership of a pharmacist on all governing boards of health. This administrative regulation establishes the function and membership of the governing board of health.

(d) The benefit expected from administrative regulation is to provide clarity of governing board function and membership.

(e) The administrative regulation will be implemented as follows: By the Division of Local Health Department Operations, Department for Public Health, Cabinet for Health Service.

June 15, 2002

(1) **902 KAR 100:012**. Fee schedule.

(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 July 31, 2002 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 July 31, 2002, 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 Brown, 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 the fees for radioactive material licensees and radiation producing machines registrants is KRS 211.848.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 100:012. The administrative regulation amends the fee schedule for radioactive material licensee, and also establishes fees for sealed source and device amendments and reviews, shielding evaluations and reviews, and oversight of radioactive material transportation. The amendment also establishes fees for new categories of license that: authorizing decommissioning, decontamination or reclamation; and authorizing the receipt of prepackaged byproduct, source, or special nuclear material from other persons, licenses authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for storage, treatment and packaging for transfer to another person.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 211.842, 211.844 and 211.848 mandates the Cabinet for Health Services to establish programs for radioactive material, to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste, and to assess fees for these activities. This administrative regulation establishes a fee schedule for programs to manage, evaluation and assess the use of radiation.

(d) The benefits expected from this administrative regulation are: The amendments will provide a mechanism for the cabinet to fund statutory mandates that ensure the beneficial use of radiation while protecting the citizens of the Commonwealth from unnecessary exposure to the harmful effects of ionizing radiation that is a carcinogen. The resources from these fees shall be directed toward licensure, registration, certification, inspections, compliance activities, emergency response, and other radiation protection activities for the protection of public health.

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

Department for Medicaid Services

June 15, 2002

(1) **907 KAR 1:055**, Payments for primary care center, federally-qualified health center, and rural health clinic 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 July 31, 2002 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 July 31, 2002, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of General 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:

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for primary care center, federally-qualified health center (FQHC), and rural health clinic services are KRS 194.030(3), 194A.050(1), 205.520(3), 216B.042, 216B.105, 42 CFR 405.2463, 440.130, 447.325, 45 CFR Part 74, 48 CFR Part 31, 42 USC 1396a, 1396a(aa), b, d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:055 to comply with the PPS reimbursement provisions of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), incorporate rural health clinic reimbursement information, add pertinent definitions, delete the incentive payment provision, clarify policy issues, establish program payment limitations, delete the fiscal year end cost settlement provision, add new incorporated by reference documents, delete obsolete incorporated by reference material, add physician assistant to the definition of health care provider for primary care centers, rural health clinics and federally-qualified health centers, add licensed clinical social worker and licensed psychologist to the definition of health care provider only for FQHCs, and make drafting and formatting changes as required by KRS Chapter 13A.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the provisions relating to reimbursement made by the department for primary care center, federally-qualified health center and rural health clinic services.

(d) The benefits expected from this administrative regulation are: To bring the Medicaid policy relating to payments for primary care center, federally-qualified health center and rural health clinic services into compliance with federal regulations.

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

May, 20, 2002

(1) **907 KAR 3:030**, Coverage and payment for IMPACT Plus 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 July 31, 2002 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 July 31, 2002, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of General 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 Medicaid Services, Division of Financial Management, 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 coverage and payments for IMPACT Plus services are KRS 194A.030 and 194A.050.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 3:030 to:

1. Clarify the eligibility criteria for the IMPACT Plus Program;

2. Establish criteria for being at risk of institutionalization;

3. Establish standards for covered services;

3. Clarify the requirements for covered services;

4. Clarify provider qualifications and conditions for participation;

5. Clarify medical record requirements;

6. Amend the reimbursement criteria;

7. Delete the IMPACT Plus Manual from being incorporated by reference; and

8. Make necessary corrections to comply with KRS Chapter 13A, and other technical policy amendments.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to provide uniform access to medically necessary services to the targeted population. It also provides the Department for Medicaid Services the necessary tools for monitoring services and to assure delivery of quality services to the targeted population.

(d) The benefits expected from this administrative regulation are continued implementation and refinement of the IMPACT Plus Program, a program that provides targeted case management and rehabilitative services to Medicaid-eligible children who are institutionalized or at risk of institutionalization. Other expected benefits include improved oversight capability, increased service quality, improved documentation of services, and establishment of an outcomes measurement program.

(e) The administrative regulation will be implemented as follows: By the Division of Medicaid Services for Mental Health/Mental Retarda-

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tion, Department for Medicaid Services, Cabinet for Health Services.

Commission for Children with Special Health Care Needs

June 15, 2002

(1) **911 KAR 2:120**, Kentucky Early Intervention Program evaluation and eligibility.

(2) Cabinet for Health Services, Commission for Children with Special Health Care Needs 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 July 31, 2002 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 July 31, 2002, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-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, Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Building C, Louisville, Kentucky 40217.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Kentucky Early Intervention Program evaluation and eligibility are KRS 194A.050 and 200.650-200.676.

(b) The administrative regulation that the Commission for Children with Special Health Care Needs intends to promulgate will amend 911 KAR 2:120, Kentucky Early Intervention Program evaluation and eligibility to:

1. Provide an opportunity for the CSHCN to conduct a review of a child's record prior to being referred for an intensive level evaluation (ILE);

2. Provide clarifying language regarding when the 45 days starts to have the initial IFSP meeting;

3. Renders the cabinet in compliance with KRS Chapter 13A regarding the established risk conditions which were never incorporated into the regulation;

4. Expand the membership of the ILE team to include a pediatric physiatrist or a pediatric neurologist; and

5. Expand the components of an evaluation report.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program.

(d) The benefits expected from this administrative regulation are: Clearer direction as to the eligibility process, saving funds by creating a process for the commission to review a record that has been referred for an intensive level evaluation, and compliance with KRS Chapter 13A.

(e) The administrative regulation will be implemented as follows: By the Health and Development Division, Commission for Children with Special Health Care Needs, Cabinet for Health Services.

June 15, 2002

(1) **911 KAR 2:200**, Coverage and payment for Kentucky Early Intervention Program services.

(2) Cabinet for Health Services, Commission for Children with Special Health Care Needs 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 July 31, 2002 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 July 31, 2002, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-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, Commission for Children with Special Health Care Needs, Building C, 982 Eastern Parkway, Louisville, Kentucky 40217.

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

(7) Information relating to the proposed administrative regulation.

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(a) The statutory authority for the promulgation of an administrative regulation relating to coverage and payment for Kentucky Early Intervention Program services are KRS 194A.030, 194A.050, 200.650-200.676.

(b) The administrative regulation that the Commission for Children with Special Health Care Needs intends to promulgate will amend 911 KAR 2:200, Coverage and payment for Kentucky Early Intervention Program services to:

1. Reduce various provider rates for assessments and therapeutic interventions by an average of 7% based on the cost/time study completed by Solutions, Inc.;

2. Include procedures for requesting additional units of service;

3. Enforce Medicaid policy regarding access of third party insurance;

4. Provide clarification of specific services and how they must be provided.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

(d) The benefits expected from this administrative regulation are: providing needed direction for First Steps providers regarding various outstanding issues, and controlling the growth of this program by reducing some of the reimbursement rates by an average of 7%.

(e) The administrative regulation will be implemented as follows: By the Division of Health and Development, Commission for Children with Special Health Care Needs, Cabinet for Health Services.

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

June 14, 2002

(1) **921 KAR 4:116**, Home Energy Assistance Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 2002, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to July 31, 2002, 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 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 administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 4:116 is 42 USC 862, 45 CFR 96 Subpart H, and KRS 194B.050(1).

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 921 KAR 4:116, Home Energy Assistance Program. The proposed administrative regulation is necessary to:

1. Clarify eligibility criteria for LIHEAP;

2. Clarify the fair hearing process;

3. Revise benefit levels;

4. Clarify application process;

5. Clarify and expand definitions;

6. Clarify the operating dates of the program in Section 9;

7. Add provisions for summer cooling component;

8. Update material incorporated by reference; and

9. Make changes as required by KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has responsibility under 42 USC 8621 to administer the Low Income Home Energy Assistance Program to help low income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating assistance and clarifies the fair hearing process.

(d) The benefits expected from this administrative regulation are: This administrative regulation will provide help to low income households to meet the cost of home energy.

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

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June 14, 2002

(1) **922 KAR 1:480**, Supplemental payments for foster care.

(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 July 31, 2002, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to July 31, 2002, 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 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 administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 922 KAR 1:480 is KRS 194B.050(1), 605.130(1), 605.150(1) and 42 USC 671 et seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a new administrative regulation, 922 KAR 1:480. The proposed administrative regulation is necessary to:

1. Define supplemental payments on behalf of children who are placed by the Cabinet for Families and Children in foster care,

2. Define education and training benefits for foster parents; and

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

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation is required by 200.115(1) to provide for the care and treatment as it deems necessary for the well-being of children committed to the cabinet.

(d) The benefits expected from this administrative regulation are: To clarify benefits or supplemental payments that foster care parents could be eligible to receive.

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JUNE 14, 2002

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

STATEMENT OF EMERGENCY
301 KAR 2:041E

These emergency administrative regulations amend existing administrative regulations which set the criteria and specifications for the holding of cervids, and creates a new administrative regulation which establishes new criteria, specifications and requirements for the importing into Kentucky, transporting and holding of cervids in Kentucky, as well as establishing the procedures for obtaining all necessary permits. Due to the outbreak and spread of chronic wasting disease (CWD) in numerous states, specific criteria and health requirements for cervids are needed in an attempt to prevent the entrance of CWD into Kentucky. Further, new criteria which establish the fencing requirements and specifications for holding cervids need to be adopted to ensure that any facility that holds cervids is secure and in such condition so as to minimize escape and the risk of transmission of any disease to both the wildlife population and existing livestock. Because of HB 470, which allows the Department of Agriculture to develop and promulgate health requirements for cervids and the department to promulgate importation and holding requirements, these administrative regulations act as companions to emergency health administrative regulations for cervids that will be filed by the Department of Agriculture. These emergency administrative regulations shall be replaced by ordinary administrative regulations. The notices of intent were filed with the Regulations Compiler on May 24, 2002.

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

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:041E. Shooting preserves and foxhound training enclosures.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.240, 150.630, 150.990
STATUTORY AUTHORITY: KRS 150.170(1)(q), 150.240(2)
EFFECTIVE: May 24, 2002
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.170(1)(q) establishes a special license for nonresidents to hunt on shooting preserves and gives the department the authority to regulate commercial and private shooting preserves. KRS 150.240(2) authorizes the department to require shooting preserve permits. This administrative regulation is necessary to insure that detrimental exotic game species are not introduced, to insure uniformity of shooting preserve operating procedures, and to protect native wildlife.

Section 1. Definitions. (1) "Commercial shooting preserve" means a shooting preserve which is open to the public and charges fees for hunting.
(2) "Hoofed animal" means ungulate wildlife except wild hog and javelina.
(3) "Member" means a person whose name is included on a private shooting preserve membership list submitted to the department.
(4) "Private shooting preserve" means a shooting preserve which is open only to members.
(5) "Shooting preserve" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Shooting Preserve Hunting Seasons. (1) Quail - August 15 through May 15.
(2) Pheasant, chukar and mallard duck - year round.
(3) Hoofed animals - September 1 through May 15.
(4) Seasons for other species shall conform to those in effect

where the preserve is located.

Section 3. Permits and Applications. (1) Without first obtaining a permit from the department, a person shall not operate:
(a) A shooting preserve; or
(b) A foxhound enclosure with field trial authorization to exempt a participant from hunting license requirements.
(2) An application:
(a) Shall be made on a form supplied by the department;
(b) For a commercial shooting preserve permit or a foxhound training enclosure permit shall be signed by each person having a financial interest in the preserve.
(c) For a private shooting preserve permit shall be:
1. Signed by the officers of the organization; and
2. Accompanied by a list of members.
(3) The applicant for a permit shall produce evidence that he is the owner or a bona fide lessee of record of the land where he proposes to establish a shooting preserve.
(4) The department shall not issue a private shooting preserve permit to an organization with fewer than twenty (20) members.
(5) The operator of a private shooting preserve shall submit an updated membership list to the department as necessary to reflect current membership.
(6) An applicant for a foxhound enclosure permit shall provide evidence that he is the owner or operator of the enclosure.
(7) If the ownership or management of a foxhound training enclosure changes, the new owner or manager shall apply for a new permit.

Section 4. Nonresident Shooting Preserve Licenses. A commercial shooting preserve operator wishing to sell nonresident shooting preserve licenses shall:
(1) Furnish the department with a surety bond in the amount of \$500.
(2) At the end of each month from September through May, send the department all money received from the sale of nonresident shooting preserve licenses.

Section 5. Shooting Preserve Size Requirements and Posting. (1) A shooting preserve shall not be larger than 2,000 acres.
(2) The boundary of a shooting preserve shall be marked with signs:
(a) At least eight (8) inches by twelve (12) inches;
(b) Having a white background with contrasting letters at least one (1) inch high;
(c) Reading "Shooting Preserve"; and
(d) Placed not be more than 500 feet apart.

Section 6. Operating Requirements. (1) A person shall not hunt or carry a gun on a shooting preserve:
(a) Before checking in:
1. With the operator of a commercial shooting preserve; or
2. At a designated check station of a private shooting preserve.
(b) Without a current Kentucky hunting license or shoot-to-retrieve field trial permit.
(2) A person observing but not participating in a field trial shall not be required to possess a hunting license.
(3) A field trial may be held throughout the year on a licensed shooting preserve.

Section 7. Recordkeeping Requirements. (1) The permit holder shall maintain a daily record of hunting activities on the preserve showing the name, address and hunting license number of each person using the preserve.
(2) A commercial preserve operator shall obtain a receipt showing the number of game bird eggs or game birds purchased by species.
(3) A permit holder shall retain records and receipts for at least one (1) year.

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(4) A member hunting on a private shooting preserve shall have in his possession:

- (a) A bill of sale for birds released for hunting; or
- (b) A copy of the preserve's commercial propagation permit.

Section 8. Hoofed Animals. (1) A commercial shooting preserve permit holder shall not release a hoofed animal unless the preserve is:

- (a) A single block of land at least 300 acres; and
- (b) In compliance with the requirements of 301 KAR 2:083; and
- (c) The hoofed animal was legally acquired as per 301 KAR 2:083 and Department of Agriculture's administrative regulations 302 KAR 20:040E, 302 KAR 20:065E and 302 KAR 20:066E [:

(a) The preserve is:
1. A single block of land at least 300 acres; and
2. Fenced to contain released animals and to exclude native hoofed wildlife; and

(b) The hoofed animal was legally acquired].

(2) The permit holder shall:

- (a) Keep a record of:
 1. The number of each hoofed species released; and
 2. The name, address, hunting license number and game killed by species by each hunter.
- (b) At the end of each month from September through May, submit these records to the department.

Section 9. Foxhound Training Enclosure Requirements. (1) To qualify for a permit, a foxhound training enclosure shall be:

- (a) At least 200 acres;
- (b) Fenced to enclose foxes; and
- (c) Not divided by an interior fence that restrict the range of foxes to less than 200 acres.

(2) Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:

- (a) Each is at least 200 acres; and
- (b) The enclosures share a common fence.

(3) The operator shall provide:

(a) Proper food, water, and shelter from inclement weather for foxes within the enclosure.

(b) At least one (1) natural or constructed den, box or hollow log per fifty (50) acres, sufficient to hold the foxes within the enclosure, preventing their capture by hounds.

(c) If a fox is held for release into an enclosure, a cage:

1. Eight (8) feet long, four (4) feet wide and six (6) feet high;
2. With a shelf eighteen (18) inches wide, three (3) feet high and four (4) feet long; and
3. Containing an enclosed den box capable of housing a pair of foxes.

(4) A person shall not hold more than one (1) pair of foxes or a pair and their young less than one (1) year old per cage.

Section 10. Operations and Licensing Requirements on Foxhound Training Enclosures. (1) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox in the enclosure.

(2) Fox chasing on permitted areas shall be considered an authorized field trial if a fox is not captured or killed.

(3) A person shall not take wildlife within an enclosure except under applicable administrative regulations and license requirements.

(4) An operator shall:

- (a) Allow the department to inspect his facilities; and
- (b) Comply with commercial pet and propagation permit requirements in obtaining and holding foxes.

Section 11. Incorporation by Reference. (1) The following are incorporated by reference:

(a) Commercial or Private Shooting Preserve Permit Application, 1998;

(b) Application for Commercial Foxhound Training Enclosure Permit, 1998.

(2) These forms may be inspected, copied or obtained at the 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.

C. THOMAS BENNETT, Commissioner
DR. JAMES RICH, Chairman
ANN R. LATTA, Secretary

APPROVED BY AGENCY: May 24, 2002

FILED WITH LRC: May 24, 2002 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the application procedure for establishing a shooting preserve; a special license for nonresidents to hunt on shooting preserves; and procedures to ensure hunting safety, preservation of native species and prevention of detrimental exotic game species.

(b) The necessity of the administrative regulation: To establish requirements for the safe operation and accountability of shooting preserves and participants.

(c) How does this administrative regulation conform with the authorizing statute: KRS 150.240(2) authorizes the department to promulgate administrative regulations governing shooting preserves.

(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.240(2) authorizes the department to promulgate administrative regulations for shooting preserves. This administrative regulation will supplement the statute by providing the specific procedures for permitting shooting preserves.

(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: The amendment requires that a shooting preserve comply with the requirements of 301 KAR 2:083, which relates to the transportation and importation of cervids.

(b) The necessity of the amendment to this administrative regulation: To put into place safety measures to deter the spread of chronic wasting disease, which is a highly contagious disease and can affect wild cervids.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who operate shooting preserves. There are approximately 72 shooting preserves in Kentucky.

(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: The persons who operate shooting preserves who import cervids into Kentucky will be affected. Shooting preserve operators will have to comply with the health requirements of the Department of Agriculture administrative regulations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees the shooting preserve permit process. Both divisions current budgets will provide 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. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because

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this administrative regulation applies to all shooting preserve operators and participants.

STATEMENT OF EMERGENCY
301 KAR 2:081E

These emergency administrative regulations amend existing administrative regulations which set the criteria and specifications for the holding of cervids, and creates a new administrative regulation which establishes new criteria, specifications and requirements for the importing into Kentucky, transporting and holding of cervids in Kentucky, as well as establishing the procedures for obtaining all necessary permits. Due to the outbreak and spread of chronic wasting disease (CWD) in numerous states, specific criteria and health requirements for cervids are needed in an attempt to prevent the entrance of CWD into Kentucky. Further, new criteria which establish the fencing requirements and specifications for holding cervids need to be adopted to ensure that any facility that holds cervids is secure and in such condition so as to minimize escape and the risk of transmission of any disease to both the wildlife population and existing livestock. Because of HB 470, which allows the Department of Agriculture to develop and promulgate health requirements for cervids and the department to promulgate importation and holding requirements, these administrative regulations act as companions to emergency health administrative regulations for cervids that will be filed by the Department of Agriculture. These emergency administrative regulations shall be replaced by ordinary administrative regulations. The notices of intent were filed with the Regulations Compiler on May 24, 2002.

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

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:081E. Pet and propagation permits.

RELATES TO: KRS 150.015, 150.180, 150.280, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.470
STATUTORY AUTHORITY: KRS [43A.350, 150.170,] 150.180
EFFECTIVE: May 24, 2002

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to control the indiscriminate possession of wildlife and to insure that wildlife is humanely and properly cared for; to protect the public and native wildlife from wildlife-borne diseases and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.

Section 1. The requirements of this administrative regulation shall apply to [Definitions. "Wildlife" means] all species of normally undomesticated animals except lovebirds, cockatiels, white rats, exotic finches, hamsters, guinea pigs, canaries, mice, reptiles, myna birds, gerbils, toucans, and primates.

Section 2. Taking and Possessing Wildlife. (1) A person shall not hold wildlife in captivity which was not legally taken or possessed.

(2) A person holding wildlife in captivity shall apply for a permit within ten (10) days after the wildlife is acquired.

(3) Captive cervids shall be held under the provisions of 301 KAR 2:083.

Section 3. Importation or Possession Prohibited. A person shall not import or possess the following wildlife: wild hog, jack rabbit, monk parakeet, javelina, nutria, wild turkey, San Juan rabbit, bear, bobcat, cougar, raccoon dog (Nyctereutes procyonoides) and wolf. The commissioner may approve exceptions for certain educational, scientific or research purposes.

Section 4. Permits. (1) Commercial pet and propagation permits.

(a) A person buying, selling, possessing, propagating or exhibiting wildlife for commercial purposes shall obtain a commercial pet and

propagation permit from the department.

(b) Commercial permit holders shall obtain wildlife only from permitted or qualified sources as determined by the commissioner.

(c) Determination of wildlife permitted to be possessed, transported, bought, sold, or exhibited will be made by the commissioner or his appointed representative.

(2) Noncommercial pet and propagation permits.

(a) A person possessing, purchasing, or propagating wildlife for noncommercial purposes shall obtain a noncommercial pet and propagation permit from the department within ten (10) days after the wildlife is acquired.

(b) Holders of noncommercial permits may obtain wildlife legally from the wild or from a permitted or qualified source as determined by the commissioner.

(3) Transportation permits and veterinarian's certificates.

(a) A person importing, transporting, or receiving shipment of live wildlife shall first obtain a transportation permit from a conservation officer; nonresidents receiving wildlife shipments in Kentucky may apply directly to the department.

(b) All shipments of wildlife shall be accompanied by a veterinarian's certificate stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the veterinarian's certificate.

(4) Commercial and noncommercial permits are renewable annually from dates of issue.

Section 5. Applying for Permits. (1) All applications for pet or propagation permits shall be made on standard forms.

(2) The applicant shall indicate the source of supply of the wildlife.

(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(4) A permit holder shall show this written proof to a conservation officer upon request.

Section 6. Confining Facilities and Inspections. (1) Confining facilities shall be large enough to allow reasonable space for exercise, shelter, and maintenance of sanitary conditions.

(2) The holder of a pet or propagation permit shall allow a conservation officer to inspect the facilities at any reasonable time.

(3) The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is being kept under unsanitary or inhumane conditions.

(4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.

(5) The pet or propagation permit shall be revoked and all wildlife confiscated if it becomes apparent that an application was not made in good faith, or if the permit holder is convicted of any law violation concerning the species for which he holds a permit.

(6) Fees shall not be refunded for permits which are revoked.

Section 7. Conditions for Selling Wildlife. (1) The carcasses of wild deer, wild elk, wild turkey, wild rabbit or squirrel shall not be sold.

(2) Other wildlife or parts thereof produced on a permitted commercial propagation facility may be sold.

(3) The pelts of furbearers may be sold during the regular open season or at other times by written permission of the commissioner.

(4) All wildlife sold alive for propagation purposes or to commercial shooting preserves shall bear a tag on each crate stating the name and address of the propagator and permit number. The tags may be obtained from the department.

(5) All propagated wildlife sold for food purposes shall be tagged with tags obtained from the department.

Section 8. Sale of Bobwhite Quail for Food Purposes. (1) A person who sells bobwhite quail for human consumption shall have a food purposes permit from the department. This food purposes permit is valid for one (1) year from date of issue.

(2) This permit shall be in addition to all other permits required for the operations of propagation farms.

(3) The holder of a food purposes permit shall present to a person buying quail an invoice in triplicate showing the number of birds and

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the date of sale.

(4) The seller shall have the invoice signed by the purchaser.

(5) The seller shall mail one (1) copy of the invoice to the department.

(6) The seller and purchaser shall retain one (1) copy of the invoice for at least one (1) year.

(7) A restaurant or store serving or selling bobwhite quail for food shall possess and display a valid sale for food certificate.

(8) A person shall not sell bobwhite quail for food purposes to restaurants or stores which do not possess a valid sale for food certificate.

C. THOMAS BENNETT, Commissioner

DR. JAMES RICH, Chairman

ANN R. LATTA, Secretary

APPROVED BY AGENCY: May 24, 2002

FILED WITH LRC: May 24, 2002 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the application procedure for pet and propagation permits; the facility specifications; inspection procedures; and conditions for selling wildlife.

(b) The necessity of the administrative regulation: To establish requirements for the safe operation commercial wildlife facilities.

(c) How does this administrative regulation conform with the authorizing statute: KRS 150.180 authorizes the department to promulgate administrative regulations governing buying and selling wildlife.

(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.180 authorizes the department to promulgate administrative regulations for the commercial sale of wildlife. This administrative regulation will supplement the statute by providing the specific procedures for holding and propagating wildlife for sale.

(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: The amendment requires that a shooting preserve comply with the requirements of 301 KAR 2:083.

(b) The necessity of the amendment to this administrative regulation: To put into place safety measures to deter the spread of chronic wasting disease, which is a highly contagious disease and can affect wild cervids.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who operate shooting preserves. There are approximately 158 commercial pet propagation facilities in Kentucky.

(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: The persons who operate commercial pet propagation facilities. Commercial pet propagation operators will have to comply with the requirements of 301 KAR 2:083.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees the commercial wildlife propagation permit process. Both divisions current budgets will pro-

vide 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. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all shooting preserve operators and participants.

STATEMENT OF EMERGENCY

301 KAR 2:082E

These emergency administrative regulations amend existing administrative regulations which set the criteria and specifications for the holding of cervids, and creates a new administrative regulation which establishes new criteria, specifications and requirements for the importing into Kentucky, transporting and holding of cervids in Kentucky, as well as establishing the procedures for obtaining all necessary permits. Due to the outbreak and spread of chronic wasting disease (CWD) in numerous states, specific criteria and health requirements for cervids are needed in an attempt to prevent the entrance of CWD into Kentucky. Further, new criteria which establish the fencing requirements and specifications for holding cervids need to be adopted to ensure that any facility that holds cervids is secure and in such condition so as to minimize escape and the risk of transmission of any disease to both the wildlife population and existing livestock. Because of HB 470, which allows the Department of Agriculture to develop and promulgate health requirements for cervids and the department to promulgate importation and holding requirements, these administrative regulations act as companions to emergency health administrative regulations for cervids that will be filed by the Department of Agriculture. These emergency administrative regulations shall be replaced by ordinary administrative regulations. The notices of intent were filed with the Regulations Compiler on May 24, 2002.

PAUL E. PATTON, Governor

C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Emergency Amendment)

301 KAR 2:082E. Importing and holding exotic wildlife.

RELATES TO: KRS 150.010, 150.180, 150.280, 150.290, 150.305

STATUTORY AUTHORITY: KRS, 150.025(1), 150.180(6), 150.280

EFFECTIVE: May 24, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 authorizes the department to promulgate administrative regulations governing the holding of protected wildlife; KRS 150.180(6) requires a person transporting live wildlife into Kentucky to obtain a permit from the department. This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation or holding of exotic species with the potential to damage native ecosystems, places restriction on importing species that are potentially dangerous to human health and safety, and lists exotic species not classified as wildlife.

Section 1. Definitions. (1) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals, but shall not include a show including wrestling bears or other direct contact between members of the public and inherently dangerous animals.

(2) "Exotic wildlife" means living terrestrial wildlife species which have:

(a) Never existed in the wild in Kentucky; or

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(b) Been extirpated from the state and could not be reasonably expected to survive in the wild if introduced.

(3) "Protected wildlife" is defined by KRS 150.010(25).

(4) "Wildlife" is defined by KRS 150.010(41).

Section 2. (1) Except as specified in subsection (2) of this section, a person shall not import or possess:

(a) Suricate or slender-tailed meerkat (Genus *Suricata*);

(b) Flying fox or fruit bat (Genus *Pteropus*);

(c) Wild European rabbit (also called the San Juan Rabbit);

(d) Mulimammate rat (Subgenus *Mastomys*);

(e) Nutria (*Myocastor coypus*);

(f) Monk or Quaker parakeet (*Myiopsitta monachus*);

(g) Cuckoo (Family *Cuculidae*), except native species;

(h) Sky lark (*Alauda arvensis*);

(i) European blackbird (*Turdus merula*);

(j) Mistle thrush (*Turdus viscivorus*);

(k) Fieldfare (*Turdus pilaris*);

(l) Song thrush (*Turdus philomelos*);

(m) White eyes (Genus *Zosterops*);

(n) Cape sparrow (*Plocius philippines*);

(o) Baya weaver (*Plocius baya*);

(p) Madagascar weaver (*Foudia madagascariensis*);

(q) Weaver finches (Genus *Passer*), except *Passer domesticus*;

(r) Dioch or red-bellied quelea (*Quelea quelea*);

(s) Cowbirds (Genus *Molothrus*), except native species;

(t) Blackbirds (Genus *Agelaius*), except native species;

(u) Yellowhammer (*Emberiza citrinella*);

(v) Java sparrow (*Padda oryzivora*);

(w) Hawaiian rice bird or spotted munia (*Lonchura punctulata nisoria*);

(x) Starlings (Family *Sturnidae*) except *Sturnus vulgaris* and hill mynahs (*Graclua Religiosa*);

(y) Pink starling or rosy pastor (*Sturnus roseus*);

(z) Mute swan (*Cygnus olor*);

(aa) Giant or marine toad (*Bufo marinus*);

(bb) Tongueless or African clawed frog (*Aenopus laevis*);

(cc) A member of the following families:

1. Suidae (pigs or hogs), except for domestic swine;

2. Viverridae (civets, genets, lingsangs, mongooses and fossas);

3. Tayassuidae (Peccaries and javelinas).

(2) Except as provided in 301 KAR 2:083, a person shall not import a member of the family Cervidae.

(3) Under the provisions of KRS 150.180(6) the commissioner may allow the importation or possession of the species listed in subsection (1) of this section for legitimate scientific or educational purposes by:

(a) A zoo that is:

1. A member of the American Zoo and Aquarium Association; or

2. Designated as the official zoo of a municipality.

(b) A government agency;

(c) A college or university; or

(d) A similar educational or research institution.

Section 3. (1) A person shall obtain a transportation permit from the department before importing exotic wildlife.

(2) An application for a transportation permit shall be made on an application for Transportation Permit form provided by the department and accompanied by:

(a) A veterinarian's certificate that the wildlife does not exhibit symptoms of disease;

(b) A copy of a bill or sale or other proof that the wildlife was obtained legally; and

(c) If not an institution listed in Section 2(2) of this administrative regulation, a signed statement from the local authority having jurisdiction over where the animal will be kept, certifying that the possession of the following dangerous exotic species is not prohibited by local ordinance:

1. African buffalo (*Syncerus caffer*);

2. Hippopotamus (*Hippopotamus amphibius*);

3. Hyenas (family *Hyaenidae*), all species except aardwolves (*Proteles cristatus*);

4. Honey badger or ratel (*Mellivora campensis*);

5. Old world badger (*Meles meles*);

6. Lions, jaguars, leopards or tigers (Genus *Panthera*);

7. Clouded leopard (*Neofelis nebulosa*);

8. Cheetah (*Acinonyx jubatus*);

9. Elephants (family *Elephantidae*);

10. Rhinoceroses (family *Rhinocerotidae*);

11. Gibbons or siamangs (family *Hylobatidae*);

12. Orangutans, chimpanzees, or gorillas (Family *Pongidae*);

13. Baboons, drills or mandrills (Genus *Papio*);

14. Macaques (Genus *Macaca*);

15. Gelada baboon (*Theropithecus gelada*);

16. Gavials (Family *Gavialidae*);

17. Crocodiles (Family *Crocodylidae*);

18. Alligators or caimans (Family *Alligatoridae*);

19. Sea snakes (Family *Hydrophidae*);

20. Cobras or coral snakes (Family *Elapidae*);

21. Adders or vipers (Family *Viperidae*);

22. Venomous rear-fanged species (Family *Colubridae*);

23. Gila monsters or beaded lizards (Family *Helodermatidae*);

24. Komodo dragon (*Varanus komodoensis*);

25. The following constricting snakes over eight (8) feet in length:

a. Boa constrictor (*Boa constrictor*) all subspecies;

b. Anaconda (*eunectes murinus*);

c. Indian python (*Python molurus*);

d. Reticulated python (*Python reticulatus*); or

e. Rock Python (*Python sebae*);

26. Bears (Family *Ursidae*);

27. Wolf or wolf hybrids of over twenty-five (25) percent wolf; or

28. Cougar or mountain lion (*Felis concolor*).

(3) Failure to provide accurate, truthful and complete information on the application form shall result in:

(a) Immediate withdrawal or revocation of the permit; and

(b) Confiscation of the wildlife imported under the permit.

Section 4. A person shall not release exotic wildlife into the wild.

Section 5. Unless otherwise protected by state or federal law, exotic wildlife shall not:

(1) Be classed as protected wildlife; and

(2) Require a permit from the department for possession.

Section 6. The following classes of animals shall not be considered wildlife and shall not require permits from the department for importation or possession:

(1) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra aegagrus*);

(2) Domestic swine, except free-living or feral wild boars or wild swine;

(3) Llama (*Lama glama*);

(4) Alpaca (*Lama pacos*);

(5) Domestic Yak (*Bos grunniens*);

(6) Camels (*Camelus bactrianus* and *Camelus dromedarius*);

(7) Hamsters (*Mesocricetus* spp.);

(8) Domesticated races of mink (*Mustela vison*), if:

(a) Adults are heavier than 1.15 kilograms; or

(b) The fur color can be distinguished from wild mink;

(9) Guinea pigs (*Cavia porcellus*);

(10) Gerbils (*Meriones unguiculatus*);

(11) Chinchillas (*Chinchilla laniger*);

(12) Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);

(13) Domesticated races of the European rabbit (*Oryctolagus cuniculus*), except the wild European rabbit (also called the San Juan Rabbit).

(14) Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;

(15) Domestic races of ducks and geese (*Anatidae*) distinguishable morphologically from wild ducks or geese;

(16) Feral Pigeons (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;

(17) Guinea fowl (*Mumida megeagris*);

(18) Peafowl (*Pavo cristatus*);

(19) Ratites, as defined by KRS 247.870; or

(20) American bison.

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Section 7. The provisions of this administrative regulation shall not be enforced until after January 1, 1998.

Section 8. Incorporation by Reference. (1) Application for Transportation Permit, (1997), Department of Fish and Wildlife Resources, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

C. THOMAS BENNETT, Commissioner

DR. JAMES RICH, Chairman

ANN R. LATTA, Secretary

APPROVED BY AGENCY: May 24, 2002

FILED WITH LRC: May 24, 2002 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the procedures for transporting live wildlife into Kentucky.

(b) The necessity of the administrative regulation: To prohibit the importation or holding of exotic species with the potential to damage native ecosystems.

(c) How does this administrative regulation conform with the authorizing statute: KRS 150.180 authorizes the department to promulgate administrative regulations governing transporting wildlife.

(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.180 authorizes the department to promulgate administrative regulations relating to transporting wildlife. This administrative regulation establishes which species of wildlife may not be imported into Kentucky.

(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: The amendment requires that persons shall not import a member of the cervid family except as provided in 301 KAR 2:083.

(b) The necessity of the amendment to this administrative regulation: To put into place safety measures to deter the spread of chronic wasting disease, which is a highly contagious disease and can affect wild cervids.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who wish to import cervids into Kentucky.

(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: The persons who wish to import cervids into this state will be impacted. These persons may not import cervids into this state unless they comply with 301 KAR 2:083, which will ensure that safety precautions are taken.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees wildlife transportation permits. Both divisions' current budgets will provide 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 regula-

tion, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all shooting preserve operators and participants.

STATEMENT OF EMERGENCY

301 KAR 2:083E

These emergency administrative regulations amend existing administrative regulations which set the criteria and specifications for the holding of cervids, and creates a new administrative regulation which establishes new criteria, specifications and requirements for the importing into Kentucky, transporting and holding of cervids in Kentucky, as well as establishing the procedures for obtaining all necessary permits. Due to the outbreak and spread of chronic wasting disease (CWD) in numerous states, specific criteria and health requirements for cervids are needed in an attempt to prevent the entrance of CWD into Kentucky. Further, new criteria which establish the fencing requirements and specifications for holding cervids need to be adopted to ensure that any facility that holds cervids is secure and in such condition so as to minimize escape and the risk of transmission of any disease to both the wildlife population and existing livestock. Because of HB 470, which allows the Department of Agriculture to develop and promulgate health requirements for cervids and the department to promulgate importation and holding requirements, these administrative regulations act as companions to emergency health administrative regulations for cervids that will be filed by the Department of Agriculture. These emergency administrative regulations shall be replaced by ordinary administrative regulations. The notices of intent were filed with the Regulations Compiler on May 24, 2002.

PAUL E. PATTON, Governor

C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET

Department of Fish and Wildlife Resources

(New Emergency Administrative Regulation)

301 KAR 2:083E. Transportation and holding of captive cervids.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.180(6), 150.280

EFFECTIVE: May 24, 2002

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.180(6)

requires that a person who wishes to transport wildlife into Kentucky, obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding wildlife. This administrative regulation establishes the requirements for holding and transporting cervids into Kentucky.

Section 1. Definitions. (1) "Cervid" means any member of the family Cervidae.

(2) "Line post" means any post in a fence that is not a corner or end post.

Section 2. Fencing and Holding Requirements. (1) Exterior fences shall be at least eight (8) feet above ground level for their entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link. Spacing between vertical wires shall not exceed six (6) inches for captive deer and twelve (12) inches for captive elk. If two (2) woven wire fences are combined, one (1) above the other, they must be firmly attached to each other at intervals no greater than three (3) feet. The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

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(2) Fence posts shall extend a minimum of eight (8) feet above the ground and be of sufficient strength to maintain the fence integrity. Pine wood posts shall be treated. All posts shall be set to a minimum depth of three (3) feet. T-posts shall be installed according to manufacturers' specifications.

(3) Line posts. Wooden line posts shall be a minimum of four (4) inches in diameter and be spaced no more than twenty-four (24) feet apart. Steel pipeline posts shall be a minimum of two and three-eighths (2 3/8) inches in diameter, weigh a minimum of three (3) pounds per foot, and be spaced no more than twenty-four (24) feet apart. Metal "T" posts shall be a minimum of 1.25 pounds per foot and be spaced no more than twenty (20) feet apart. If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(4) Corner and end posts. Wooden corner and end posts shall be a minimum of five (5) inches in diameter. Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter. Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity and shall be approved by the department.

(5) All gates shall be substantially constructed to meet the specifications of the fence, and shall be equipped with at least one (1) latching and one (1) locking device.

(6) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence. These crossings shall be adequate to prevent ingress and egress during high water. Permissible water gaps are as follows:

- (a) Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);
- (b) Pipe with swinging barrier (larger water gaps);
- (c) Pipe with fixed mesh barrier (smaller water gaps); and
- (d) Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(7) Right-of-ways. The fence right-of-way shall be cleared for a distance of six (6) feet on each side of interior fences and six (6) feet on the inside of property boundary fences. On the permittee's property, all dead timber with a height greater than the distance to the fence shall be felled.

(8) In the event of topographic or other conditions which allow cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence so as to prevent such passing by whatever means are possible, including but not limited to additional, stronger or higher fence posts, special grading, additional wire to increase fence height and other design measures. Unless site specific conditions require otherwise, fencing running perpendicular to the slope contour shall require standard fencing.

(9) Maintenance. The fence shall be maintained in a game-proof condition at all times.

Section 3. Capture and Handling Facilities. (1) Each captive facility shall have an approved handling facility or device, such as a squeeze chute or crush, which facilitates inspection, handling or capture of an individual animal.

(2) If a permittee's facility does not have the handling or capture facilities listed in subsection (1) of this section, alternatives such as dart guns, tranquilizers or other devices which immobilize an animal must be approved by the department.

(3) Licensed shooting preserves that do not comply with subsections (1) and (2) of this section shall be required to sacrifice animals for testing purposes as per the Department of Agriculture's health requirements specified in 302 KAR 20:040, 302 KAR 20:065 and 302 KAR 20:066.

Section 4. Tagging and Recordkeeping. (1) Captive cervids over one (1) year old shall be uniquely identified with a plastic "flop" tag in at least one (1) ear that is clearly visible and identifiable at a distance of fifty (50) feet and a permanent USDA metal ear tag in one (1) ear. KDFWR may approve alternatives for plastic "flop" tags.

(2) Cervids being stocked in licensed shooting preserves shall comply with the provisions of 301 KAR 2:041 but may substitute one (1) of the following in place of the above ear tags or other approved form of identification:

- (a) Lip tattoo; or
- (b) Microchip.

(3) Alternatives to tagging may be granted to bona fide zoos, nature centers, or similar educational institutions upon request.

Section 4. Ingress and Egress. The owner shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape. If the owner is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the owner shall report each escape to KDFWR by telephone (1-800-858-1549). The owner shall then file a written report (KDFWR, #1 Game Farm Road, Frankfort, Kentucky 40601) within ten (10) days, describing what escaped and the reason for the escape. The owner shall also report known ingress of wild cervids into the enclosure by filing a written report to KDFWR (KDFWR, #1 Game Farm Road, Frankfort, Kentucky 40601). The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if necessary.

Section 5. Space Requirements. For a permitted facility, each deer shall be allowed at least 1,000 square feet of space (e.g., five (5) deer in an enclosure would require at least 5,000 square feet of enclosure space). One (1) elk requires at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space (e.g., five (5) elk would require 5,500 square feet of enclosure space).

Section 6. Prohibited Species. After the effective date of this administrative regulation, no new holding permits shall be issued for the following species:

- (1) Red deer (*Cervus elaphus elaphus*);
- (2) Axis deer (*Axis axis*);
- (3) Rusa deer (*Cervus timorensis*);
- (4) Sambar deer (*Cervus unicolor*);
- (5) Sika deer (*Cervus nippon*);
- (6) Roe deer (*Capreolus capreolus* and *Capreolus pygargus*); or
- (7) Hybrids thereof.

Section 7. Genetic Purity Testing. Prior to moving or importing live elk, proof of genetic testing to ensure the purity of each animal shall be performed to prevent the introduction of red deer or hybrid nonnative species. Offspring of elk documented to be genetically pure via testing are exempt from genetic testing.

Section 8. Holding Permits. (1) Issuance. Before a captive cervid permit is issued, each facility must pass an inspection that will certify and document that each facility is in compliance with the applicable administrative regulations. Permits shall be renewable annually.

(2) Duration. Each captive cervid permit may be renewed annually upon payment of the annual fee and proof of compliance with the applicable administrative regulations.

(3) Species. Each permit shall identify the species and number of animals being held.

(4) Inspections. Facilities shall be inspected annually after issuance of a captive cervid permit to certify and document that the facility is in compliance with the applicable administrative regulations.

(5) Revocation or suspension. Anyone convicted of a violation of KRS Chapter 150 or Title 301 KAR shall have their permit revoked and their status suspended.

(6) Appeal procedures. Any individual whose request for a permit has been denied or whose status has been revoked and suspended may request an administrative hearing pursuant to KRS Chapter 13B.

(7) Upon the effective date of this administrative regulation, an individual who is currently permitted to hold cervids may apply for a "conditional permit" which shall be valid for one (1) year. The permittee shall have the one (1) year duration to bring their facility into compliance with the provisions of this administrative regulation. No new cervids shall be moved from any source into the facility until the facility is in compliance with this administrative regulation.

Section 9. Transportation Permits. (1) Before any person imports a cervid into Kentucky from out of the state, they shall first obtain a captive cervid permit and transportation permit from the department. No transportation permit shall be required for move-

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ment within the state, provided that the cervid was legally imported into the state and is being legally held in Kentucky.

(2) Before a transportation permit for cervids shall be issued, the applicant shall provide documentation to the department that the animals being imported are in compliance with all applicable Kentucky Department of Agriculture health requirements found in 302 KAR 20:040E, 302 KAR 20:065E and 302 KAR 20:066E.

(3) Application for transportation permits shall be made on a standard form provided by the department or by telephone from 8 a.m. to 4:30 p.m. EST, Monday through Friday (1-800-858-1549) provided the applicant holds a valid captive cervid permit and Kentucky Department of Agriculture verifies that all health requirements are met. At the time of application for a transportation permit, the applicant shall provide to the department:

- (a) The location of the source herd;
- (b) The species being imported;
- (c) The number being imported; and
- (d) The date of importation.

(4) Payments for transportation permits issued by telephone shall be received within seven (7) business days.

(5) Persons shall have a cervid transportation permit and certificate of veterinary inspection in their possession while transporting cervids.

Section 10. Selling Cervids. A permittee may sell live cervids, parts thereof, or any products produced by captive cervids, provided that those animals were not obtained from the wild in Kentucky.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Standard Department Transportation Permit Application, Revised 6/93; and
- (b) Captive Cervid Permit Application, created 5/24/02.

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

C. THOMAS BENNETT, Commissioner
DR. JAMES RICH, Chairman
ANN R. LATTA, Secretary

APPROVED BY AGENCY: May 24, 2002
FILED WITH LRC: May 24, 2002 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the procedures for transporting and holding live cervids into Kentucky.

(b) The necessity of the administrative regulation: To establish fencing and holding requirements for captive cervids to deter the spread of chronic wasting disease and other transmittable diseases to Kentucky's wild deer and elk herds.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.180 authorizes the department to promulgate administrative regulations governing transporting wildlife.

(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.180 authorizes the department to promulgate administrative regulations relating to transporting wildlife. This administrative regulation establishes under what conditions cervids may be transported into Kentucky and how the cervids shall be held.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organi-

zations or state and local governments that will be affected: Persons who wish to import cervids into Kentucky.

(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: The persons who wish to import cervids into this state will be impacted. These persons may not import cervids into this state unless they comply with this administrative regulation, which will ensure that safety precautions are taken to prevent the spread of disease.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees wildlife transportation permits. Both divisions current budgets will provide 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. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all persons wishing to import cervids into this state.

STATEMENT OF EMERGENCY
301 KAR 2:084E

This emergency administrative regulation establishes the requirements for obtaining a transportation permit to import game birds into Kentucky. The requirements for importing "wildlife" into Kentucky are set forth in 301 KAR 2:081. This emergency administrative regulation sets forth specific criteria for importing game birds into Kentucky. Due to the outbreak of avian influenza in neighboring states, specific criteria and health requirements for game birds are needed to prevent the entrance and spread of the virus in Kentucky. This administrative regulation acts as a companion to emergency avian influenza administrative regulations for poultry that were filed by the Department of Agriculture. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notices of intent were filed with the Regulations Compiler on May 30, 2002.

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

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Emergency Administrative Regulation)

301 KAR 2:084E. Importation of game birds.

RELATES TO: KRS 150.280, 150.290
STATUTORY AUTHORITY: KRS 150.025(1), 150.180(6)
EFFECTIVE: May 30, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.780 authorizes the department to promulgate administrative regulations governing the holding of protected wildlife. KRS 150.180(6) requires a person transporting live wildlife into Kentucky to obtain a permit from the department. This administrative regulation establishes the procedure for obtaining a transportation permit for the importation of certain game birds species into Kentucky to prevent the introduction and spread of the avian influenza virus into Kentucky.

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Section 1. Definition. "Game birds" shall include but not be limited to turkeys, quail, pheasant, chukars, grouse, waterfowl or other avian species normally imported for propagation or for the purpose of hunting, shooting, training or field trial activities.

Section 2. Importation of Game Birds. Before any live game bird is imported into Kentucky, the person importing said bird or birds must obtain a transportation permit from the department.

Section 3. Applying for Permits. (1) All applications for importation or transportation permits shall be made on standard forms.

(2) The applicant shall indicate the source of supply of the wildlife.

(3) The applicant shall also provide documentation that the shipment is in compliance with the Department of Agriculture's avian influenza health requirements found in 302 KAR 20:020E, 302 KAR 20:040E, and 302 KAR 20:250E.

Section 4. Incorporation by Reference. (1) Standard Department Transportation Permit Application, Revised 6/93, is incorporated by reference.

(2) The document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

C. THOMAS BENNETT, Commissioner

DR. JAMES RICH, Chairman

ANN R. LATTA, Secretary

APPROVED BY AGENCY: May 24, 2002

FILED WITH LRC: May 30, 2002 at 4 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes requirements for the issuance of a transportation permit for game birds being imported into Kentucky.

(b) The necessity of the administrative regulation: To prevent the introduction and spread of the avian influenza virus to Kentucky.

(c) How this administrative regulation conforms with the authorizing statutes: The authorizing statute mandates the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This regulation establishes procedures needed for implementation. Other statutes impose restrictions on importation and holding of wildlife.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation establishes procedures for monitoring entry of game birds into Kentucky.

(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: By affect, 301 KAR 2:081 will no longer apply to or include game birds.

(b) The necessity of the amendment to this administrative regulation: 301 KAR 2:081 applies to shipment of all wildlife, this emergency regulation specifically addresses game birds.

(c) How does the amendment conform to the authorizing statutes: KRS 150.025(1) mandates the department to enact regulations to carry out the purposes of KRS Chapter 150 and 150.180 and 150.780 allows the department to establish criteria for how wildlife will be imported and held.

(d) How the amendment will assist in the effective administration of the statutes: By establishing specific requirements for the importation of game birds to help prevent avian influenza from entering Kentucky.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Could potentially affect any person attempting to import game birds.

(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. Individuals importing game birds will have to provide documentation that the birds

have satisfied all applicable health requirements.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: N/A

(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 directly or indirectly increases any fees: This regulation does not establish or increase any fee.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation equally to all individuals and entities regulated by it.

STATEMENT OF EMERGENCY

302 KAR 20:040E

HB 470, which was passed in the 2002 regular session of the General Assembly, enlarged the statutory definition of livestock to include deer and elk. It requires the Department of Agriculture to promulgate administrative regulations pertaining to health requirements, eradication of diseases and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. Due to the unknown brucellosis and tuberculosis status of cervids entering Kentucky, specific criteria and health requirements for cervids are necessary in an attempt to prevent the introduction of tuberculosis and brucellosis into Kentucky. This administrative regulation will minimize the risk of transmission of any disease to the existing livestock population. HB 470 also requires the Department of Fish and Wildlife to promulgate administrative regulations pertaining to the importation and holding of cervids. This emergency administrative regulation acts as a companion to emergency administrative regulations for transportation and holding of cervids that were filed by the Department of Fish and Wildlife. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Notice of Intent of the ordinary administrative regulation will be filed simultaneously with the emergency administrative regulation.

PAUL E. PATTON, Governor

BILLY RAY SMITH, Commissioner

DEPARTMENT OF AGRICULTURE

Division of Animal Health

(Emergency Amendment)

302 KAR 20:040E. Entry into Kentucky.

RELATES TO: KRS Chapter 257, 9 CFR 77.20-77.41

STATUTORY AUTHORITY: KRS 257.030

EFFECTIVE: May 24, 2002

NECESSITY, FUNCTION, AND CONFORMITY: To establish health requirements for entry, including sales or exhibition, for livestock and animals into Kentucky.

Section 1. General Provisions. (1) All animals shall be accompanied by a certificate of veterinary inspection unless otherwise provided in this administrative regulation.

(2)(a) A permit may be obtained by calling (502) 564-3956, Monday through Friday, 8 a.m. through 4:30 p.m.

(b) Requests for permits made after 4:30 p.m., Monday through Friday, and on weekends and holidays shall be telephonically recorded.

(c) Permits requested pursuant to paragraph (b) of this subsection shall not be issued for certain species designated by the chief livestock health official.

(d) Permit numbers obtained pursuant to this subsection shall be recorded on the certificate of veterinary inspection.

(3) All required testing shall be conducted by a state-federal approved laboratory.

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(4) Certificate of Veterinary Inspection shall be void thirty (30) days after date of issuance for entry into Kentucky, except as noted.

Section 2. Cattle. (1) General requirements.

(a) A permit shall be required prior to entry for all cattle except steers and spayed heifers. Permit number shall be recorded on Certificate of Veterinary Inspection.

(b) Cattle moving directly from a farm of origin may enter an approved state-federal livestock market in Kentucky without a permit or Certificate of Veterinary Inspection as described in 302 KAR 20:070.

(c) If animals are from a tuberculosis accredited or a brucellosis certified herd, Certificate of Veterinary Inspection shall show herd accreditation and herd certification number with date of last herd test for tuberculosis and brucellosis.

(2) Specific diseases.

(a) Brucellosis. Import requirements for cattle originating in Class "A" or Class "Free" states or areas:

1. Sexually intact bovines twelve (12) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry unless the cattle:

a. Originate directly from a brucellosis certified free herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age;

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age; or

d. Are open heifers less than eighteen (18) months of age designated for feeding purposes.

2. Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirements shall be a violation of this administrative regulation.

3. Heavy springers and cows postpartum shall be test eligible regardless of age.

4. Heifers for exhibition in carcass classes shall be officially identified but shall not be required to be brucellosis tested if accompanied by a certificate of veterinary inspection.

5. Bison shall meet the same requirements as cattle.

(b) Tuberculosis.

1. Cattle six (6) months of age or older for dairy, breeding or exhibition purposes shall be negative to an official tuberculin test within sixty (60) days prior to date of entry, unless exempted by one (1) of the following:

a. The cattle originate directly from a tuberculosis accredited free herd; or

b. The cattle originate directly from a tuberculosis eradicated free state; or

c. Unweaned nursing calves accompanied by their dam shall be officially identified but shall not be required to be tuberculosis tested unless they are offered for sale individually.

2. Cattle classified as suspects or cattle originating from a quarantined herd shall not be imported.

3. Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

4. Bison six (6) months of age or older shall be negative to an approved tuberculosis test within sixty (60) days prior to entry, or originate from an accredited herd.

5. Feeder cattle from a modified accredited state or area are exempt from tuberculosis testing requirements unless required by the chief livestock health official.

6. Steers and heifers for carcass classes shall be officially identified but shall not be required to be tuberculosis tested if originate from an accredited herd or from a tuberculosis free state.

(3) Other disease requirements.

(a) Scabies. No cattle affected with or exposed to scabies or from an area quarantined because of scabies shall be imported, shipped, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health official or his authorized representative.

(b) Ticks. No cattle infested with ticks (*Margarophus Annulatus*) or exposed to tick infestation shall be shipped, trailed, driven or otherwise moved into Kentucky for any purpose.

(c) No cattle from a state-federal tick quarantined area shall be shipped, trailed, driven or otherwise moved into Kentucky except in

accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health official or his authorized representative.

(d) Cattle infected with warts, ringworm or any contagious, infectious or communicable disease are not eligible for entry.

(4) Other movements. Slaughter cattle. Cattle consigned for immediate slaughter may be imported without official test for brucellosis or tuberculosis provided such cattle are consigned for immediate slaughter to a recognized slaughtering establishment under state, federal or municipal inspection or to an approved state-federal stockyard or federal stockyard for reconsignment to a recognized slaughter establishment. Animal(s) diverted en route will be in violation of this regulation.

(5) Exhibition. All cattle shall be in compliance with requirements noted above and shall be accompanied with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 3. Horses. (1) General requirements.

(a) All horses and other equidae entering Kentucky shall be accompanied by a Certificate of Veterinary Inspection except horses and other equidae purchased at an approved out-of-state horse sale. Certificate shall include all tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used.

(b) Attached to the Certificate of Veterinary Inspection shall be a copy of a certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to an AGID test or other USDA approved test for equine infectious anemia.

(c) Horses with evidence of a contagious, infectious or communicable disease or exposure thereto shall not be eligible for entry.

(2) Specific diseases.

(a) Equine infectious anemia.

1. All horses and other equidae six (6) months of age or older except unweaned foals accompanied by their dam, offered for sale shall be negative to an AGID test or other USDA approved test for equine infectious anemia within six (6) months prior to entry except horses and other equidae purchased at an out-of-state approved horse sale.

2. Horses and other equidae purchased at an out-of-state approved horse sale:

(b) May move directly to a Kentucky approved auction market. On entry into the market all horses and other equidae shall have an EIA test conducted under the requirements of 302 KAR 2.065, Section 4(1); or

(c) A Kentucky licensed livestock dealer may purchase horses and other equidae and may move animals directly to his Kentucky premises. On entry into the premises animals shall be kept separate and apart from other animals on the premises. Horses may move to an approved horse sale within fourteen (14) days postentry or shall have an official EIA test conducted within fourteen (14) days postentry. The owner shall document the movement of horse(s) to an approved horse sale and when horses remain on the dealers premises the dealer shall document that an official EIA test has been conducted within the required fourteen (14) days postentry.

(d) An entry permit shall be required and shall be obtained prior to entry into Kentucky. The permit may be obtained by calling (502) 564-3956 day or night.

(e) In lieu of a Certificate of Veterinary Inspection a bill of lading or waybill shall accompany horses on entry. The bill of lading or waybill shall document entry permit, number of horses purchased, individual horse identification, sex, age, color, brand, tattoo (if available), market sale identification and all other markings.

(f) All horses and equidae purchased from an out-of-state approved horse sale shall be available for inspection by an agent of the Board of Agriculture.

(g) Horses may be placed under quarantine on entry. Quarantine shall be released when requirements of 302 KAR 20:040, Section 3(2)(a) have been met.

(h) A licensed livestock dealer may move horses that are origin out-of-state but movement shall be directly to a Kentucky approved horse sale.

(i) Horses may move from an out-of-state farm of origin but movement shall be directly from the farm of origin to a Kentucky approved horse sale.

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3. All horses and other equidae six (6) months of age or older, except unweaned foals accompanied by their dam, offered for entry for reasons other than sale (i.e., entry into fairgrounds, livestock showgrounds, public boarding stables, trail rides, racing, etc.) shall be negative to an AGID test or other USDA approved test for equine infectious anemia within twelve (12) months prior to entry.

(j) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal(s) to be free from symptoms of a contagious, infectious or communicable disease or exposure thereto.

Section 4. Swine. (1) General requirements.

(a) A permit shall be obtained prior to movement for all swine entering for breeding and feeding purposes.

(b) All swine shall be officially identified by a state-federal approved identification, except as noted in 302 KAR 20:220.

(c) If animals are from validated and qualified herds, the Certificate of Veterinary Inspection shall show herd validation and qualification number with date of last herd test for brucellosis and pseudorabies.

(2) Specific diseases.

(a) Garbage fed swine. Swine fed raw garbage shall not be imported for any purpose. Swine fed properly cooked garbage are eligible for import directly to a state or federal inspected slaughtering establishment only.

(b) Brucellosis. All swine for breeding purposes six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry or originate directly and immediately from a validated herd. No agglutination in dilution of 1-50 shall be accepted unless the individual or individuals to be imported are negative to an official card or PCFIA test. On entry, animals must be quarantined for no less than thirty (30) days and must show a negative postmovement brucellosis test within thirty (30) to sixty (60) days of entry.

(c) Pseudorabies. All swine imported for breeding, sale or exhibition purposes shall be negative to an official blood test within thirty (30) days prior to entry or originate directly and immediately from a qualified herd, and originate from a farm free of pseudorabies for the past six (6) months as evidenced on the Certificate of Veterinary Inspection. On entry, animals must be quarantined and shall show a negative postmovement pseudorabies test within thirty (30) to sixty (60) days of entry.

(d) Feeder pigs. All feeder pigs must also comply with 302 KAR 20:210, Pseudorabies surveillance.

(3) Other movements. Farm premises. Identity to the farm of origin must be maintained on all breeding and feeding swine imported from farm premises to an approved stockyard or farm of destination.

(4) Exhibition. All swine shall be in compliance with requirements noted above for swine with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 5. Sheep. (1) General requirements. Certificate of Veterinary Inspection must have prior approval by the chief livestock health official of the state of origin.

(2) Specific diseases.

(a) Scrapie.

1. Entry for sale. No sheep or lambs shall be imported that originate from or known to be exposed to flocks listed as a scrapie affected surveillance flock by USDA APHIS VS. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible for entry for sale. The Certificate of Veterinary Inspection shall document the flock is in compliance with the USDA VSFC Program.

2. Entry for exhibition.

a. Sheep or lambs shall be eligible for exhibition which originate from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC).

b. Sheep and lambs which originate from a flock listed as a surveillance flock by USDA APHIS Veterinary Services may be eligible for exhibition only if no clinical scrapie has occurred in the origin flock within the last eighteen (18) months and if no animal(s) from the flock of origin had positive scrapie confirmed by the National Veterinary Services Laboratory (NVSL) within the past eighteen (18) months. A statement by the veterinarian issuing Certificate of Veterinary Inspection shall document origin flock is in compliance with the USDA VSFC Program and the origin flock has not had clinical scrapie within the

past eighteen (18) months and no animal(s) from the origin flock has been diagnosed as positive for scrapie by NVSL within the past eighteen (18) months.

c. All sheep and lambs for exhibition shall be in compliance with other requirements as noted in this administrative regulation for sheep and lambs and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. Such identification shall be entered on an approved Certificate of Veterinary Inspection.

(b) Scabies. All sheep or lambs for breeding or feeding purposes imported from a farm, ranch or like premises shall be accompanied by an approved Certificate of Veterinary Inspection indicating such sheep and lambs originated directly and immediately from an official scabies eradicated free area.

(c) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be imported.

(d) Sheep and lambs infected with a contagious, infectious and communicable disease are not eligible for entry, sale or exhibition.

(2) Other movements. Healthy sheep and lambs may be imported into Kentucky for immediate slaughter when consigned directly to a recognized slaughtering center approved by the chief livestock health official of Kentucky or to a public stockyard, a state-federal approved stockyard, concentration point or public stockyard when reconsignment from that point is to immediate slaughter.

(3) Exhibition. All sheep and lambs for exhibition shall be in compliance with requirements noted above as specified for sheep and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. Such identification shall be entered on an approved Certificate of Veterinary Inspection.

Section 6. Goats. (1) Specific diseases.

(a) Scabies. All goats must originate from a scab-free area.

(b) Scrapie. No goats from a herd under surveillance for scrapie or those that are known to have been exposed to or that are progeny shall be imported.

(c) Brucellosis. Animals six (6) months of age or older shall have an official negative test within thirty (30) days prior to entry or originate directly and immediately from a certified herd.

(d) Tuberculosis. Animals six (6) months of age or older shall have an official negative tuberculin test within sixty (60) days prior to entry or originate directly and immediately from accredited herd.

(2) Exhibition. All goats for exhibition shall be in compliance with requirements noted above as specified for goats with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 7. Poultry. (1) General requirements. Poultry shall be individually identified with an official leg or wing band on the Certificate of Veterinary Inspection which shall accompany the animals.

(2) Specific diseases. Salmonella Pullorum. Negative agglutination test within thirty (30) days prior to date of entry. The laboratory conducting the test and test results shall be recorded on a Certificate of Veterinary Inspection and certificate shall accompany poultry.

(3) Other movements. Chicks and hatching eggs shall originate from a flock under the National Poultry or National Turkey Improvement Plan.

(4) Exhibition. Certificate of Veterinary Inspection stating compliance with above requirements and in addition thereto all poultry shall be inspected prior to exhibition for evidence of any contagious, infectious, or communicable disease of poultry. Evidence of any contagious, infectious or communicable disease shall be justification for the elimination of said poultry from exhibition or sale at no expense to the Commonwealth of Kentucky.

Section 8. Psittacine Birds. As regulated by 9 CFR Part 82.

Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for three (3) year immunity by the "Compendium of Animal Rabies Vac-

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cines" prepared by the Association of State Public Health Veterinarians, (Inc.); qualifies dog if it is one (1) year of age when vaccinated: provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Bureau for Health Services, Kentucky Cabinet for Human Resources.

Section 10. Fur Bearing Animals, Domesticated Wild Animals and Zoo Animals. Wild and semiwild animals under domestication or in custody may be imported into the state if accompanied by a permit and Certificate of Veterinary Inspection and provided that a report of the number of animals is made to the chief livestock health official of Kentucky within ten (10) days and that immediate opportunity for examination is afforded a representative of the Division of Animal Health, Kentucky Department of Agriculture, to determine the health status of such animal or animals and the imports are presented for the administration of all laboratory procedures and tests deemed necessary by the chief livestock health official of Kentucky. Transportation permit required on wild, game animals, birds and fish. Permit to be obtained from Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601 (telephone (502) 564-3400).

Section 11. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.). (1) General requirements.

(a) A permit shall be obtained by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. prior to entry into Kentucky. Permit number shall be recorded on the Certificate of Veterinary Inspection and certificate shall accompany ratite(s) on entry.

(b) All ratites shall have a permanent official identification approved by a state-federal agency.

(c) Any ratite with evidence of a contagious, infectious or communicable disease shall not be eligible for entry.

(2) Specific diseases.

(a) Ratites shall be negative to an official test for Avian Influenza within thirty (30) days prior to entry.

(b) Ratites shall be negative to an official test for Salmonella Pullorum within thirty (30) days prior to entry.

(c) Certificate of Veterinary Inspection shall include a statement that ratites are healthy and are not known to have been exposed to any contagious, infectious or communicable diseases within the last six (6) months.

(3) Exhibition. Ratites presented for exhibition shall be in compliance with requirements noted above as specified for ratites with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 12. Camelids (Llamas, Alpacas, Camels, etc.). (1) General requirements.

(a) A permit shall be obtained prior to entry of camelids into Kentucky by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. Permit number shall be recorded on Certificate of Veterinary Inspection and certificate shall accompany animal(s) on entry.

(b) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

(2) Specific diseases.

(a) Brucellosis. Camelids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry.

(b) Tuberculosis. Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within sixty (60) days prior to entry.

(3) Exhibition. All camelids for exhibition shall be in compliance with requirements noted above as specified for camelids with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 13. Cervid (Deer, Elk, Moose, and All Other Members of the Family Cervidae). (1) General requirements.

(a) All cervids shall be accompanied on entry by a Certificate of Veterinary Inspection which shall include an entry permit number and official individual animal identification as required by this administrative regulation. Certificate shall be valid thirty (30) days after issuance.

(b) An entry permit number may be obtained by calling (502) 564-3956, Kentucky's automated permit system, available twenty-four (24) hours a day. The entry permit number shall be recorded on the Certificate of Veterinary Inspection.

(c) A transportation permit from the Kentucky Department of Fish and Wildlife Resources shall be required pursuant to 301 KAR 2:083.

(2) Specific diseases.

(a) Brucellosis.

1. Captive cervid six (6) months of age or older shall be negative to an official USDA-approved brucellosis test within thirty (30) days of entry; or

2. Originate directly and immediately from an certified brucellosis-free herd.

(b) Tuberculosis. The official tuberculosis tests shall be single cervical tuberculin (SCT).

(c) Cervid origin a tuberculosis quarantined state or area shall not be imported.

Section 14. Wild Free-ranging Cervid. (1) Wild free-ranging cervid shall not be imported from a state quarantined for brucellosis or tuberculosis.

(2) Wild free-ranging cervid shall not be isolated prior to entry unless required by the state veterinarian.

(3) Wild free-ranging cervid shall have a SCT test conducted within thirty (30) days prior to entry. Cervid that are included in a group that has a classified tuberculosis suspect or tuberculosis positive shall disqualify all cervid of that group for entry.

(4) Wild free-ranging cervid six (6) months of age or older shall have an official USDA-approved brucellosis test within thirty (30) days of entry. Cervid that are included in a group that has a brucellosis suspect or brucellosis positive shall disqualify all cervid of that group for entry.

(5) Wild free-ranging cervid shall have a statement recorded on a Certificate of Veterinary Inspection that the cervid are healthy and are not known to have been exposed to any contagious, infectious, or communicable disease within the last six (6) months.

Section 15. All cervids entering Kentucky shall comply with provisions of 9 CFR 77.20-77.41.

Section 16. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change.

(1) Part 77 Tuberculosis, Subpart C-Captive Cervids (1-1-02 Edition).

(2) The federal regulations are available for inspection and copying, during normal business hours of 8 a.m. to 4:30 p.m., Eastern Time, excluding state holidays, at the Division of Animal Health, 100 Fair Oaks, Frankfort, Kentucky 40601, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: May 24, 2002

FILED WITH LRC: May 24, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Don Notter, State Veterinarian.

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes health requirements for entry of livestock and other animals into Kentucky.

(b) The necessity of this administrative regulation: To prevent the introduction of disease.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute mandates the de-

partment to promulgate administrative regulations to carry out the provisions of KRS Chapter 257. This regulation establishes procedures needed for implementation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements to be met before livestock and other animals can enter Kentucky.

(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: Requires that cervids be in compliance with established health requirements for entry into Kentucky.

(b) The necessity of the amendment to this administrative regulation: To prevent introduction of disease.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize regulations to carry out administration and enforcement of KRS Chapter 257.

(d) How the amendment will assist in the effective administration of the statutes: Establishes requirements and procedures necessary for administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All cervid producers in the state.

(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 participants will be required to conform to requirements of administrative regulation.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(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 fee increase to implement this 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 fee.

(9) TIERING: Is tiering applied? Tiering was not used. This administrative regulation applies equally to all individuals and entities regulated by it.

**STATEMENT OF EMERGENCY
302 KAR 20:065E**

HB 470, which was passed in the 2002 regular session of the General Assembly, enlarged the statutory definition of livestock to include deer and elk. It requires the Department of Agriculture to promulgate administrative regulations pertaining to health requirements, eradication of diseases and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. Due to the unknown brucellosis and tuberculosis status of cervids in Kentucky, specific criteria for the sale and exhibition of cervids in Kentucky are necessary in an attempt to prevent the introduction of tuberculosis and brucellosis into Kentucky. This administrative regulation will minimize the risk of transmission of any disease to the existing livestock population. House Bill 470 also requires the Department of Fish and Wildlife to promulgate administrative regulations pertaining to the importation and holding of cervids. This emergency administrative regulation acts as a companion to emergency administrative regulations for transportation and holding of cervids that were filed by the Department of Fish and Wildlife. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Notice of Intent of the ordinary administrative regulation will be filed simultaneously with the emergency administrative regulation.

PAUL E. PATTON, Governor
BILLY RAY SMITH, Commissioner

**DEPARTMENT OF AGRICULTURE
Division of Animal Health
(Emergency Amendment)**

302 KAR 20:065E. Sale and exhibition of Kentucky origin livestock in Kentucky.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

EFFECTIVE: May 24, 2002

NECESSITY, FUNCTION, AND CONFORMITY: To specify health requirements for the sale and exhibition of Kentucky livestock in Kentucky. Sale and exhibition requirements for out-of-state livestock refer to 302 KAR 20:040, Entry into Kentucky.

Section 1. General Requirements. (1)(a) All animals offered for sale or exhibition in the Commonwealth shall be accompanied by a certificate of veterinary inspection, unless otherwise provided in 302 KAR 20:070 and this administrative regulation.

(b) A certificate of veterinary inspection shall be void:

1. 150 days after issuance for purposes of exhibition; and

2. Thirty (30) days after issuance for purposes of sale.

(2) All required testing shall be conducted by a state and federally approved laboratory.

Section 2. Cattle. (1) General requirements.

(a) If animals are from an accredited or certified herd, the certificate of veterinary inspection shall document the accreditation and certification number with date of last herd test for tuberculosis and brucellosis.

(b) Blood tests for brucellosis shall be conducted by an approved state-federal laboratory.

(c) Cattle presented for change of ownership shall comply with 302 KAR 20:055.

(d) Cattle infected with warts, ringworm or any contagious, infectious or communicable disease are not eligible for sale or exhibition.

(2) Brucellosis.

(a) Sale.

1. Beef and dairy breeding animals twelve (12) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to change of ownership unless the cattle:

a. Originate directly from a certified herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age; or

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age.

2. Heavy springers and cows postpartum shall be test eligible regardless of age.

3. The seller shall:

a. Be responsible for testing pursuant to subparagraph 1 of this paragraph; and

b. Not move the cattle until negative test results are obtained.

(b) Exhibition.

1. Animals twelve (12) months of age or older shall be negative to an official test for brucellosis within 150 days prior to date of exhibition, unless the cattle:

a. Originate directly from a certified herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age; or

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age.

2. Heavy springers and cows postpartum shall be test eligible regardless of age.

3.a. Steers and spayed heifers shall be accompanied by a certificate of veterinary inspection; and

b. The certificate shall show the individual identification of each animal.

c. No brucellosis test shall be required for steers and spayed heifers that comply with this subparagraph.

(3) Tuberculosis.

(a) Sale. No test required.

(b) Exhibition. No test required.

Section 3. Performance Bull Testing Program. (1) All animals shall

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be accompanied by a Certificate of Veterinary Inspection.

(2) Brucellosis. Animals entered in this program shall, if twelve (12) months of age or older, be negative to an official brucellosis test within thirty (30) days prior to date of entry or originate directly and immediately from a certified herd.

(3) Tuberculosis. No test required.

Section 4. Horses; Specific Diseases; Equine Infectious Anemia.

(1) Sale. All horses and other equidae, except unweaned foals accompanied by their dam, six (6) months of age or older to be sold, offered for sale, traded, given away, leased, or moved for the purpose of change of ownership shall be negative to an AGID test or other USDA approved test for equine infectious anemia within the previous six (6) months. Equine which are offered for sale at approved auction markets without proof of a negative test for EIA within the previous six (6) months shall have a blood sample drawn at the market by the approved market veterinarian at the seller's expense.

(2) Exhibition. All horses and other equidae, except unweaned foals accompanied by their dam, six (6) months of age or older, offered for exhibition (i.e., entry into fairgrounds, livestock show grounds, public boarding stables, trail rides, racing, etc.) shall be negative to an AGID test or other USDA approved test for equine infectious anemia within the previous twelve (12) months.

Section 5. Swine. (1) General requirements.

(a) All swine shall have an official permanent identification.

(b) If animals originate from a validated and qualified herd, the Certificate of Veterinary Inspection shall document herd validation and qualification number with date of last herd test for brucellosis and pseudorabies.

(2) Brucellosis.

(a) Sale. All swine, except barrows, six (6) months of age or older shall have a negative test within thirty (30) days prior to sale in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd.

(b) Exhibition. All swine, except barrows, six (6) months of age or older shall have a negative brucellosis test within 150 days prior to date of exhibition in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Swine exhibiting in a terminal market hog show in which all swine proceed directly to slaughter are exempt from test requirements if no other livestock are present in the exhibition area. The exhibition area shall not be used for livestock exhibition purposes until properly cleaned and disinfected in accordance with state-federal requirements.

(3) Pseudorabies.

(a) Sale. All swine shall be negative to an official pseudorabies blood test within thirty (30) days prior to sale or originate directly and immediately from a qualified herd.

(b) Exhibition. All swine shall be negative to an official pseudorabies blood test within 150 days prior to date of exhibition or originate directly and immediately from a qualified herd. Swine exhibiting in a terminal market hog show in which all swine proceed directly to slaughter are exempt from test requirements if no other livestock are present in the exhibition area. The exhibition area shall not be used for livestock exhibition purposes until properly cleaned and disinfected in accordance with state-federal requirements.

(c) Feeder pigs. All feeder pigs shall comply with 302 KAR 20:210, Pseudorabies surveillance.

Section 6. Sheep. (1) General requirements.

(a) All sheep and lambs shall be officially identified by ear or flank tattoo, official ear tag or by microchip and entered on a Certificate of Veterinary Inspection.

(b) Sheep and lambs infected with any contagious, infectious or communicable disease are not eligible for sale or exhibition.

(2) Scrapie.

(a) Sale.

1. No sheep or lambs shall be consigned that originate from or are known to be exposed to flocks listed as a scrapie affected surveillance flock by USDA APHIS VS.

2. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible for sale. Certificate of Veterinary Inspection shall document flock is in compliance with the USCA VSFC

Program.

(b) Exhibition.

1. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible for exhibition. Certificate of Veterinary Inspection shall document flock is in compliance with the USDA VSFC Program.

2. Sheep and lambs which originate from a flock listed as a surveillance flock by USDA APHIS VS may be eligible for exhibition only if no clinical scrapies has occurred within the origin flock within the last eighteen (18) months and if no animal(s) from the flock of origin had positive scrapie confirmed by the National Veterinary Service Laboratory (NVSL) within the last eighteen (18) months. A statement by the veterinarian issuing the Certificate of Veterinary Inspection shall document this requirement for exhibition.

(3) Scabies. All sheep or lambs for breeding and feeding purposes consigned from a farm, ranch or like premises shall be accompanied by a Certificate of Veterinary Inspection indicating such sheep and lambs originated directly and immediately from an official scabies-eradicated-free area.

(4) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be eligible for exhibition or sale.

Section 7. Goats. (1) Scabies. All goats must originate from a scab-free area.

(2) Scrapie. No goats from a herd under surveillance for scrapie that are known to have been exposed to or that are progeny shall be considered.

(3) Brucellosis.

(a) Sale. Animals six (6) months of age or older shall have a negative test within thirty (30) days prior to sale in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, as applies to the bovine test or originate directly from a certified herd.

(b) Exhibition. Goats six (6) months of age or older shall be negative to an official blood test for brucellosis within 150 days prior to exhibition or originate directly from a certified herd.

(4) Tuberculosis.

(a) Sale. No test shall be required.

(b) Exhibition. No test shall be required.

Section 8. Poultry. (1) General requirements. Poultry shall be individually identified with an official leg or wing band on a Certificate of Veterinary Inspection. Certificate shall accompany poultry when presented for sale or exhibition.

(2) Salmonella Pullorum. Sale and exhibition. Negative agglutination test within thirty (30) days prior to date of sale or within 150 days prior to date of exhibition. A Certificate of Veterinary Inspection shall accompany bird(s) when presented for sale and exhibition and shall document laboratory conducting test and test date.

(3) Chicks and hatching eggs shall originate from a flock under the National Poultry or National Turkey Improvement Plan.

Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies, or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for a three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.), qualifies a dog if it is one (1) year of age when vaccinated; provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Department for Health Services, Kentucky Cabinet for Human Resources.

Section 10. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.).

(1) General requirements.

(a) A permit shall be obtained by calling (502) 564-3956 weekdays between the hours of 8 a.m. - 4:30 p.m. prior to sale of all ratites in Kentucky. This permit number shall appear on the Certificate of Veterinary Inspection accompanying the animals.

(b) All ratites shall have a permanent official identification approved by a state-federal agency.

(c) Any ratite with evidence of a contagious, infectious or communicable disease shall not be eligible for sale or exhibition.

(2) Specific diseases.

(a) Ratites shall be negative to an official test for Avian Influenza within thirty (30) days prior to sale.

(b) Ratites shall be negative to an official test for Salmonella Pullorum within thirty (30) days prior to sale.

(c) Veterinarian's statement that the ratite is not showing signs of any contagious, infectious or communicable disease.

(3) Exhibition. Ratites shall be negative to an official test for Avian Influenza and Salmonella within 150 days prior to date of exhibition.

Section 11. Camelids (Llamas, Alpacas, Camels, etc.). (1) Brucellosis.

(a) Camelids six (6) months of age or older shall be negative to an official brucellosis test within 150 days prior to date of exhibition.

(b) Camelids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to date of sale.

(c) Camelids not weaned, when accompanied by their dam shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

(2) Tuberculosis.

(a) Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within 150 days prior to date of exhibition.

(b) Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within sixty (60) days prior to sale.

(c) Camelids not weaned, when accompanied by their dam shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

Section 12. Cervid (Deer, Elk, Moose, and All Other Members of the Family Cervidae). (1) Brucellosis.

(a) Cervids six (6) months of age or older shall be negative to an official brucellosis test within 150 days prior to date of exhibition.

(b) Cervids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to date of sale, except when origin a certified brucellosis-free herd.

(c) Cervids not weaned, when accompanied by their dam shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

(2) Tuberculosis.

(a) Cervids six (6) months of age or older shall be negative to a SCT tuberculin test within 150 days prior to date of exhibition.

(b) Cervids six (6) months of age or older shall be negative to a SCT tuberculin test within sixty (60) days prior to sale, except when origin an accredited tuberculosis-free herd.

(c) Cervids not weaned, when accompanied by their dam shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

Section 13. Intrastate Movement Requirements. All intrastate movements of cervids other than to a state- or federally-inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian. The intrastate movement certificate shall include the following:

(1) Consignor's name, address, and state veterinarian issued permit number;

(2) Consignee's name, address, and state veterinarian issued permit number; and

(3) The permit number to ship, which may be obtained by telephone, issued by the state veterinarian prior to movement.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: May 24, 2002

FILED WITH LRC: May 24, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Don Notter, State Veterinarian.

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes health requirements for the sale and exhibition of Kentucky livestock in Kentucky.

(b) The necessity of this administrative regulation: To prevent introduction or spread of disease.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute mandates the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 257. This regulation establishes procedures needed for implementation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes health requirements for sale and exhibition of Kentucky livestock in Kentucky.

(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: Requires that cervid producers follow established health requirements for sale and exhibition in Kentucky.

(b) The necessity of the amendment to this administrative regulation: To prevent introduction or spread of disease.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize regulations to carry out administration and enforcement of KRS Chapter 257.

(d) How the amendment will assist in the effective administration of the statutes: Requires that cervid producers be in compliance with established requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All cervid producers in Kentucky.

(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 participants will be required to conform to guidelines.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(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 fee increase to implement this 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 fee.

(9) TIERING: Is tiering applied? Tiering was not used. This administrative regulation applies equally to all individuals and entities regulated by it.

STATEMENT OF EMERGENCY
302 KAR 20:066E

HB 470, which was passed in the 2002 regular session of the General Assembly, enlarged the statutory definition of livestock to include deer and elk. It requires the Department of Agriculture to promulgate administrative regulations pertaining to health requirements, eradication of diseases and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. Due to the outbreak and spread of chronic wasting disease (CWD) in numerous states, specific criteria and health requirements for cervids are necessary in an attempt to prevent the introduction of CWD into Kentucky. This administrative regulation will minimize the risk of transmission of any disease to the existing livestock population. HB 470 also requires the Department of Fish and Wildlife to promulgate administrative regulations pertaining to

the importation and holding of cervids. This emergency administrative regulation acts as a companion to emergency administrative regulations for transportation and holding of cervids that were filed by the Department of Fish and Wildlife. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Notice of Intent of the ordinary administrative regulation will be filed simultaneously with the emergency administrative regulation.

PAUL E. PATTON, Governor
BILLY RAY SMITH, Commissioner

DEPARTMENT OF AGRICULTURE
Division of Animal Health
(New Emergency Administrative Regulation)

302 KAR 20:066E. Chronic wasting disease surveillance in captive cervids.

RELATES TO: KRS Chapters 246, 257, 2002 Ky. Acts ch. 88
STATUTORY AUTHORITY: KRS 257.030, 2002 Ky. Acts ch. 88, sec. 1, 2

EFFECTIVE: May 24, 2002

NECESSITY, FUNCTION, AND CONFORMITY: To specify criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky, develop a herd monitoring system, and to establish requirements for intrastate movement of cervids.

Section 1. Definitions. (1) "Adjacent herd" means a herd of cervids occupying premises that border an affected herd, including herds separated by roads or streams; or a herd of cervids occupying premises that were previously occupied by an affected herd within the past five (5) years as determined by the designated epidemiologist.

(2) "Affected cervid herd" means a cervid herd from which any animal has been diagnosed as affected with CWD or is not in compliance with the provisions of the control program for CWD as described in this administrative regulation.

(3) "Approved laboratory" means the National Veterinary Service Laboratory, Ames, Iowa, or laboratories accredited by the American Association of Veterinary Laboratory Diagnosticians.

(4) "Certificate of Veterinary Inspection" means an official document issued by the state veterinarian, federal animal health official, or by a licensed, accredited veterinarian at the point of origin. The Certificate of Veterinary Inspection shall document official individual animal identification, the number of animals shipped, the purpose of the movement, the points of origin and destination, the consignor and consignee, and other information required by the state animal health officer for intra- or interstate movement.

(5) "Certified CWD cervid herd" means a herd of cervids that has qualified for and has been issued a certified CWD cervid herd certificate signed by the state veterinarian.

(6) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the cervidae family and hybrids thereof.

(7) "Cervid herd of origin" means a cervid herd, or any farm or other premises, where the animals were born or where they are kept for at least one (1) year before the date of shipping.

(8) "Cervid CWD Surveillance Identification Program" or "CCWDSI Program" means a CWD Surveillance Program requiring identification and laboratory diagnosis including brain tissue as directed by the state veterinarian, on all deaths of cervids six (6) months of age or greater or any cervid displaying clinical signs of CWD, including deaths by slaughter, hunting (including hunting on hunting preserves), illness, and injury. The diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If tissues associated with a cervid death are not submitted for laboratory diagnosis due to postmortem changes or unavailability, the state veterinarian shall determine compliance.

(9) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(10) "Closed herd" means a cervid herd which has had no imported animals for a period of three (3) years.

(11) "CWD exposed" or "exposed" means a designation applied

to cervids that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past five (5) years.

(12) "CWD affected" means a designation applied to cervids diagnosed as affected with the CWD prion based on laboratory results, clinical signs, or epidemiological investigation.

(13) "CWD suspect" means a designation applied to cervids for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results are inconclusive.

(14) "Designated epidemiologist" means a state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under this administrative regulation.

(15) "Herd" means a group of cervids that are under common ownership or supervision.

(16) "Imported animal" means an animal introduced into a herd from any source.

(17) "Individual herd plan" means a written herd management plan that is designed by the herd owner, the owner's veterinarian, if requested, and a designated epidemiologist to identify and eradicate CWD from a known affected, exposed, or adjacent herd.

(18) "KDFWR" means the Kentucky Department of Fish and Wildlife Resources.

(19) "Licensed, accredited veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture (USDA), the state veterinarian, in accordance with 9 CFR Part 161 to perform functions required by cooperative state-federal animal disease control and eradication programs, and is licensed to practice in the state of Kentucky.

(20) "Monitored CWD cervid herd" means a herd of cervids that has complied with the CCWDSI Program as defined in subsection (8) of this section. Monitored herds shall be defined as one (1) year, two (2) year, three (3) year, and four (4) year monitored in accordance with the time in years such herds have complied with the CCWDSI Program.

(21) "Official individual animal identification" means an identification eartag that conforms to the alphanumeric National Uniform Eartagging System as defined in 9 CFR Part 71.1 or other state-federal approved identification device.

(22) "Official cervid CWD test" means an approved test conducted at an approved laboratory to diagnose CWD.

(23) "Quarantine" means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

(24) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or Guam.

(25) "Traceback" means the process of identifying the herd or origin of CCWDSI Program positive animals, including herds that were sold for slaughter.

Section 2. Supervision of the Cervid CWD Program. The state veterinarian shall provide routine supervision of the Cervid CWD Control Program.

Section 3. Surveillance Procedures. Surveillance procedures include the following:

(1) Upon death, all cervids shall have the brain submitted and examined for CWD by an approved laboratory. A positive diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.

(2) Surveillance for CWD, as provided in Section 1 of this administrative regulation, shall be maintained for all cervid herds.

Section 4. Official Cervid Tests. Official cervid tests for CWD are:

- (1) Histopathology;
- (2) Immunohistochemistry;
- (3) Western Blot;
- (4) Negative Strain Electron Microscopy;
- (5) Bioassay;
- (6) Any state-federal approved test performed by an approved laboratory to confirm the diagnosis of CWD.

Section 5. Investigation of Cervid CWD Surveillance Identifica-

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tion Affected Animals. Traceback shall be performed for all animals diagnosed at an approved laboratory as affected with CWD. All herds of origin and all adjacent herds and herds having contact with affected animals as determined by the CCWDSI Program shall be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals shall be quarantined.

Section 6. Duration of Quarantine. Quarantines placed in accordance with this administrative regulation shall be removed in accordance with the following:

(1) A herd of origin may be removed from quarantine after five (5) years of compliance with all provisions of this administrative regulation.

(2) A herd having contact with affected or exposed animals may be removed from quarantine after five (5) years of compliance with the provisions of this administrative regulation or as directed by the state veterinarian, in consultation with the designated epidemiologist.

(3) An adjacent herd may be removed from quarantine as directed by the state veterinarian, in consultation with the designated epidemiologist.

Section 7. Herd Monitoring Program. (1) General. A person who keeps captive cervids in this state shall enroll the herd in the Chronic Wasting Disease Herd Monitoring Program.

(2) Application. To enroll a herd in the monitoring program, a person shall complete and submit an application provided by the department. The application shall include all the following:

(a) The name, address, and telephone number of the herd owner, and any trade names under which the herd owner does business.

(b) The name, address, and telephone number of the herd custodian, if other than the herd owner.

(c) The herd location or locations, including the street address and county.

(d) A complete herd census report compiled no more than thirty (30) days prior to the date of application. The applicant shall submit the census report on a form provided by the department. The census report shall include all the following:

1. The number, species, age, and sex of cervids in the herd.

2. The official individual animal identification of each cervid.

(e) A written statement, by a licensed, accredited veterinarian, that certifies all the following:

1. That the veterinarian is the herd veterinarian, having established a valid veterinarian-client relationship with the herd owner.

2. That the veterinarian has knowledge of all herd health records and knowledge of all disease events occurring in the herd within the past twelve (12) months.

3. That no cervid in the herd has shown any signs or symptoms of CWD in the past twelve (12) months.

(3) Action on application. The department shall grant or deny an application under subsection (2) of this section within thirty (30) days after the department receives a complete application. The herd shall be enrolled in the herd monitoring program on the day that the department accepts the application.

(4) Annual enrollment. To continue in the herd monitoring program persons shall comply with the following:

(a) Identify every cervid in the herd that is six (6) months old or older with official individual animal identification.

(b) Upon death, all cervids shall have the brain submitted and examined for CWD by an approved laboratory. A positive diagnosis of CWD by an approved laboratory shall be confirmed by the National Veterinary Service Laboratory.

(c) Notify the herd veterinarian within twenty-four (24) hours of observing an animal with signs or symptoms suggestive of CWD in the herd.

(d) Complete and file an annual herd census.

(e) Create and maintain complete herd records under subsection (6) of this administrative regulation.

(f) Provide the department with an annual written statement from the herd veterinarian. A licensed, accredited veterinarian shall sign and submit the statement within thirty (30) days before or after the anniversary of the herd's enrollment under subsection (3) of this

section. The statement shall certify all the following:

1. That the veterinarian is the herd veterinarian, having established a valid veterinarian-client relationship with the herd owner.

2. That the veterinarian has knowledge of all herd health records and knowledge of all disease events occurring in the herd within the past twelve (12) months.

3. That the herd has not shown any signs or symptoms of CWD in the past twelve (12) months.

(5) Annual herd census. A person shall complete an annual herd census under subsection (4)(d) of this section within thirty (30) days before or after the anniversary of the herd's enrollment under subsection (3) of this section. The person shall file an annual census report under subsection (4)(d) of this section, on a form provided by the department, within ten (10) days after completing the annual herd census. The report shall include all the following:

(a) The number, species, age, and sex of cervids in the herd.

(b) The official individual animal identification and all secondary identifications of each cervid.

(c) The number, species, age, and sex of cervids added to the herd since the last reported herd census. The report shall indicate whether these new cervids were natural additions or purchased additions. If cervids were purchased additions, the report shall identify source of purchased additions, date of purchase, and shall document that animals meet all the CWD surveillance and monitoring requirements prior to entry into the herd.

(d) The number, species, age, and sex of cervids that have left the herd since the last reported herd census. The report shall indicate, for each cervid, all the following:

1. Whether the cervid died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.

2. If the cervid was shipped live other than to slaughter, the name and address of the person to whom it was shipped and the place to which it was shipped.

3. If the cervid died on the herd premises, the cervid's age, official individual animal identification, and the disposition of its carcass. If the carcass left the premises, the report shall identify the carcass destination or recipient. The report shall include the CWD test result.

4. If the cervid was shipped to slaughter, the cervid's age, official individual animal identification, and the name and address of the slaughter establishment. The report shall include the CWD test result.

(6) Herd records. A person shall keep the following herd records under subsection (4)(e) of this section and shall make them available to the department upon request.

(a) A record of each purchased addition to the herd shall include:

1. The species, age, and sex of the cervid.

2. The name and address of the person from whom the cervid was purchased.

3. The address of the herd from which the cervid was purchased.

4. A copy of the Certificate of Veterinary Inspection that accompanied the animal for intra- and interstate movement.

(b) A record of each cervid leaving the herd shall include the following:

1. Whether the cervid died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.

2. If the cervid was shipped live other than to slaughter, the name of the person to whom it was shipped, the place to which it was shipped and a copy of the Certificate of Veterinary Inspection related to the shipment.

3. If the cervid died on the premises, the apparent cause of death, the cervid's age, sex, official individual animal identification, and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination or recipient.

4. If the cervid was shipped to slaughter, the cervid's age, sex, official individual animal identification, and the name and address of the slaughter establishment.

(c) A record of all CWD individual animal tests conducted on cervids in the herd.

(d) Records received from the herd veterinarian related to veterinary services provided to the herd.

(7) Suspending enrollment.

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(a) The department may, without prior notice or hearing, suspend a herd's enrollment in the herd monitoring program under this section if any of the following apply:

1. A person falsifies any information on an enrollment application, or any subsequent information required for continued enrollment.

2. A person fails to comply with requirements under subsection (4) for continued enrollment.

(b) The state veterinarian or designee may issue a suspension order under paragraph (a) of this subsection. A person adversely affected by a suspension order may request a hearing pursuant to KRS Chapter 13B.

Section 8. Identification and Disposal Requirements. Affected and exposed animals shall remain on the premises where they are found until they are identified and disposed of in accordance with direction from the state veterinarian.

Section 9. Cleaning and Disinfecting. Premises shall be cleaned and disinfected under state or federal supervision within fifteen (15) days after affected animals have been removed.

Section 10. Methods of Obtaining Certified CWD Cervid Herd Status. Certified CWD cervid herd status shall include all cervids in the cervid herd. They shall not be commingled with other cervids that are not certified. A herd may qualify for status as a certified CWD cervid herd as follows:

(1) Purchasing a certified CWD cervid herd. Upon request and with proof of purchase, the state veterinarian shall issue a new certified CWD cervid herd certificate in the new owner's name. The anniversary date and the herd number, as assigned by the department, shall remain the same. If part or all of the purchased herd is moved directly to premises that have no other cervids, the herd may retain certified CWD status, and the state veterinarian shall issue a new certification number. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

(2) Upon request and with proof of records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI Program, as defined in Section 1 of this administrative regulation, for a period of five (5) years.

Section 11. Recertification of a Certified CWD Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated when CWD affected or exposed animals are found in the herd.

Section 12. Movement into a Certified CWD Cervid Herd. Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd. Animals originating from herds which have not been certified CWD cervid herds may not be certified until they remain in the certified CWD cervid herd for five (5) years. Animals originating from CWD monitored herds shall not be certified until the combination of the CWD monitored status and the years present in the certified CWD herd total five (5) years.

Section 13. Movement into a Monitored CWD Cervid Herd. Animals originating from a monitored CWD cervid herd may move into another monitored CWD cervid herd of the same status. Animals originating from a herd which is not a monitored CWD cervid herd or from a lower status monitored CWD cervid herd shall not be monitored until they have been in the monitored herd for a number of years equal to the designation herd's monitored status at time of entry.

Section 14. Recognition of Monitored CWD Cervid Herds. The state veterinarian shall issue a monitored CWD cervid herd certificate indicating CWD monitored herd status as CWD monitored one (1), CWD monitored two (2), CWD monitored three (3), or CWD monitored four (4), according to the number of years the herd has qualified for such status.

Section 15. Recognition of Certified CWD Cervid Herds. The state veterinarian shall issue a certified CWD cervid herd certificate when the herd first qualifies. For recertification, the state veterinarian shall issue a renewal form annually.

Section 16. Intrastate Movement Requirements. All intrastate movements of cervids, other than to a state- or federally-inspected slaughter establishment, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian. The intrastate movement certificate shall include the following:

(1) Consignor's name, address, and state veterinarian issued permit number;

(2) Consignee's name, address, and state veterinarian issued permit number; and

(3) The permit number to ship, which may be obtained by telephone, issued by the state veterinarian prior to movement and one (1) of the following statements:

(a) "All cervids identified on this certificate are from a closed herd as defined in Section 1 of 302 KAR 20:066;" or

(b) "All cervids identified on this certificate originate from a herd with a minimum three (3) year monitored status;" or

(c) "All cervids identified on this certificate originate from a certified CWD cervid herd."

Section 17. Requirements for Entry into Kentucky. All cervids entering Kentucky shall be accompanied by a Certificate of Veterinary Inspection, issued by a licensed, accredited veterinarian, and a telephone entry permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the state veterinarian before movement. One (1) of the following statements shall appear on the certificate:

(1) "All cervids identified on this certificate originate from a herd in which all cervids have been kept for at least three (3) years or into which they were born. There has been no exposure to or additions from any other source in the past three (3) years. There have been no diagnoses, signs, or epidemiological evidence of CWD in this state for the past five (5) years. Records and causes of death for the past three (3) years in this herd of origin are available to the animal health official of the state of origin;" or

(2) "All cervids identified on this certificate originate from a herd which has been determined to have a minimum three (3) year monitored status by the animal health official of the State of Kentucky;" or

(3) "All cervids identified on this certificate originate from a herd which has been determined to have certified CWD cervid herd status by the animal health official of the state of Kentucky."

Section 18. For cervid herds in existence prior to the effective date of this administrative regulation, eligibility for closed herd status shall commence on the date of the last import into the herd or the last herd mortality not tested for CWD, whichever occurs last.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: May 24, 2002

FILED WITH LRC: May 24, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Don Notter, State Veterinarian.

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease, develops a herd monitoring system, and establishes requirements for intrastate movement of cervids.

(b) The necessity of this administrative regulation: To prevent introduction and spread of chronic wasting disease into Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute mandates the department to promulgate administrative regulations to carry out the provisions of KRS Chapters 246 and 257. This administrative regulation establishes requirements and procedures needed for implementation.

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(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements and procedures necessary for administration.

(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 statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect all cervid producers in the state.

(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 participants will be required to conform to requirements of administrative regulation.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(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 fee increase to implement this 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 fee.

(9) TIERING: Is tiering applied? Tiering was not used. This administrative regulation applies equally to all individuals and entities regulated by it.

STATEMENT OF EMERGENCY 503 KAR 1:160E

KRS 13A.190(2) provides that an emergency administrative regulation is one that must be placed into effect immediately in order to prevent a loss of federal or state funds. KRS 15.330(1)(c) and (g) authorize the Kentucky Law Enforcement Council to prescribe qualifications for attendance of law enforcement training courses and to promulgate administrative regulations for the training and education of Kentucky Law Enforcement Officers. The Department of Criminal Justice Training - Kentucky Police Corps has been created in accordance with the requirements of the Federal Police Corps Act (42 USC sections 14091 et seq.) to provide scholarships and educational assistance to Kentucky residents who wish to obtain a college education and pursue a career in law enforcement. The Federal Police Corps Act will provide scholarship funds of up to \$30,000 per participant in the Department of Criminal Justice Training - Kentucky Police Corps program and is expected to benefit approximately 30 participants annually. This emergency administrative regulation establishes the graduation and recordkeeping requirements for the Department of Criminal Justice Training - Kentucky Police Corps. This administrative regulation is promulgated as an emergency to prevent the loss of the scholarship funding available to Kentucky under the Federal Police Corps Act. An ordinary administrative regulation could not be promulgated since the course curriculum was not finalized and approved by the Kentucky Law Enforcement Council until their May, 2002 meeting. An ordinary administrative regulation will not suffice because it would not become effective prior to the beginning of the course of study for the Department of Criminal Justice Training - Kentucky Police Corps, which is scheduled for June 10, 2002. It is essential that the requirements of this administrative regulation be in place by that date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regula-

tion was filed with the Regulations Compiler on June 6, 2002.

PAUL E. PATTON, Governor
ROBIN COOPER, Chair

JUSTICE CABINET Kentucky Law Enforcement Council (New Emergency Administrative Regulation)

503 KAR 1:160E. Department of Criminal Justice Training - Kentucky Police Corps basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (g)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (e), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(c) and (g) authorize the Kentucky Law Enforcement Council to prescribe qualifications for attendance of law enforcement training course and to promulgate administrative regulations. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training - Kentucky Police Corps basic training course, which fulfills the requirements for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of the resulting basic training records.

Section 1. Definitions. (1) "Cadet" means a person attending the Police Corps basic training course.

(2) "Director" means the director of the Training Operations Division of DOCJT, or his designee.

(3) "Police Corps basic training" means the 1,290 1/2 hour council approved basic training course conducted by DOCJT.

(4) "Police Corps director" means the director of the Police Corps section of DOCJT, or his designee.

Section 2. Police Corps Basic Training Content. Police Corps basic training shall consist of 1,290 1/2 hours of training, and require a cadet to demonstrate proficiency in the following five (5) areas:

(1) Area I:

(a) Five (5) academic tests; and

(b) First aid and CPR, including:

1. Professional rescuer CPR;

2. American Red Cross certified first aid; and

3. Automated external defibrillation.

(2) Area II:

(a) Firearms, including:

1. Day handgun;

2. Night handgun;

3. Shotgun; and

4. Firearms familiarization.

(b) Vehicle operations, including:

1. Precision course; and

2. Emergency response course;

(c) Defensive tactics; and

(d) Mountain bike.

(3) Area III:

(a) Breath test, including:

1. Practical examination; and

2. Written examination;

(b) DUI detection, including:

1. Practical examination; and

2. Written examination; and

(c) Criminal Justice Information Systems Mobile Data Terminal, including a combined practical and written examination.

Section 3. Police Corps Basic Training Graduation Requirements. To graduate from Police Corps basic training, a cadet shall:

(1) Successfully complete a minimum of 1,290 1/2 hours of training based upon the curriculum approved by the council in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Attain a seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A cadet who does not achieve a seventy (70) percent overall score shall be considered to have failed Police Corps basic

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training;

(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A cadet who does not pass all pass or fail training areas shall be considered to have failed Police Corps basic training; and

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

Section 4. Physical Training Requirements. A cadet shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the first date of the Police Corps basic training course, the cadet shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. Sixteen (16) inch vertical jump;
2. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the cadet's body weight;
3. Eighteen (18) sit-ups in one (1) minute;
4. 300 meter run in sixty-five (65) seconds;
5. Twenty (20) pushups; and
6. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds.

(b) If a cadet passes all events when participating in the physical training entry test, he shall have met the physical training entry requirements.

(c) Retest. If a cadet fails to pass all events when participating in the physical training entry test:

1. He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;
2. All failed events shall be retested on the same date;
3. If the cadet passes all previously failed events on the date of the retest, he shall have met the physical training entry requirements; and
4. If the cadet does not pass all previously failed events on the date of the retest, he shall be unqualified to participate in the Police Corps basic training course for which he is currently enrolled, and may reapply to participate in a future DOCJT basic training course. The cadet shall receive no credit for the part of the Police Corps basic training course which he has completed.

(2) Physical training graduation requirements.

(a) Within five (5) days from the final date of the Police Corps basic training course, the cadet shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. Seventeen (17) inch vertical jump;
2. One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;
3. Eighteen (18) sit ups in one (1) minute;
4. 300 meter run in sixty-five (65) seconds;
5. Twenty-five (25) push ups; and
6. One and five-tenths (1.5) mile run in sixteen (16) minutes fifteen (15) seconds.

(b) If a cadet passes all events when participating in the physical training graduation test, he shall have met the physical training graduation requirements.

(c) Retest. If a cadet fails to pass all events when participating in the physical training graduation test:

1. He shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the Police Corps basic training course;
2. All failed events shall be retested on the same date;
3. If the cadet passes all previously failed events on the date of the retest, he shall have met the physical training graduation requirements; and
4. If the cadet does not pass all previously failed events on the date of the retest, he shall be considered to have failed Police Corps basic training.

(3) Physical training safety factors.

(a) Prior to administering the outdoor events, specifically the 300 meter run and the one and five-tenths (1.5) mile run, of the physical

training entry or graduation requirements, the physical training instructor shall survey weather conditions to determine whether the outdoor events can be safely performed without risk of physical injury due to:

1. Extreme cold, snow or icy conditions; or
2. Extreme heat or humidity or a combination thereof, or inclement weather including lightening, excessive wind, or rain.

(b) If the physical training instructor determines that it would be dangerous to administer the outdoor events due to the weather conditions, the time period in subsections (1)(a) and (2)(a) of this section may be extended until the events can be safely administered.

(c) During week sixteen (16) of Police Corps basic training, the cadets shall be administered the events of the physical training requirements for purposes of reporting their progress to their sponsoring law enforcement agencies. If weather conditions prohibit administration of the outdoor events of the physical training graduation examination prior to the last scheduled date of the Police Corps basic training course, a cadet's successful completion of the 300 meter run and the one and five-tenths (1.5) mile run during week 16 testing may be accepted in lieu of having to comply with the examination established in subsection (2)(a) of this section.

Section 5. Reexaminations. (1) A cadet shall be permitted one (1) reexamination in each of the three (3) areas of Police Corps basic training.

(2) A cadet who fails an examination, other than defensive tactics, shall not be reexamined:

(a) Earlier than twenty-four (24) hours from the original examination; or

(b) Later than:

1. Thirty (30) days after the original examination; or
2. The last scheduled day of the Police Corps basic training course.

(3) Failure of a defensive tactics examination.

(a) If the failure occurs prior to the last scheduled day of defensive tactics training, the cadet shall not be reexamined earlier than the last scheduled day of defensive tactics training.

(b) If the failure occurs on the last scheduled day of defensive tactics training, the cadet shall not be reexamined:

1. Earlier than twenty-four (24) hours from the original examination; or
2. Later than the last scheduled day of the Police Corps basic training course.

(4) A cadet shall be considered to have failed Police Corps basic training if the cadet:

- (a) Fails a reexamination in accordance with subsection (1) of this section; or
- (b) Fails two (2) examinations in the same area of Police Corps basic training.

Section 6. Failure and Repetition of Police Corps Basic Training.

(1) A cadet who has failed a Police Corps basic training course shall be unqualified for future Police Corps basic training courses. The cadet may participate, if qualified, in one (1) DOCJT law enforcement basic training course in its entirety during the following twelve (12) months.

(2) The cadet or his agency shall pay all fees for the DOCJT basic training course.

Section 7. Absence. (1) A cadet may have excused absences from Police Corps basic training with approval of the director, or the Police Corps Director.

(2) An excused absence from Police Corps basic training which causes a cadet to miss any of the required 1,290 1/2 hours of training shall be made up through an additional training assignment.

Section 8. Leave of Absence from Police Corps Basic Training.

(1) Pursuant to 42 USC section 14096(e), a cadet:

(a) Who requests a leave of absence from Police Corps basic training due to temporary physical or emotional disability shall be granted the leave for a period not to exceed one (1) year, or eighteen (18) months in the event of multiple requests; or

(b) Who requests a leave of absence from Police Corps basic

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training for a reason other than those described in paragraph (a) of this subsection may be granted the leave for a period not to exceed one (1) year, or eighteen (18) months in the event of multiple requests.

(2) The length of leaves of absence from educational study, Police Corps basic training, or service that a cadet has previously received will be deducted from the time available for a leave of absence from Police Corps basic training.

(3) A cadet who receives a leave of absence shall be required to repeat Police Corps basic training in its entirety.

Section 9. Maintenance of Records. (1) All training records required for Kentucky Law Enforcement Foundation Program Fund purposes shall be retained by DOCJT, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(2) All training records shall be:

(a) Available to the Office of the Police Corps and Law Enforcement Education of the United States Justice Department, the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

ROBIN COOPER, Chair

APPROVED BY AGENCY: June 5, 2002

FILED WITH LRC: June 6, 2002 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephanie C. Bingham

(1) Provide a brief summary of:

(a) What this regulation does: Establishes the guidelines and procedures for graduation from the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

(b) The necessity of this regulation: The regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to establish and prescribe qualifications for attendance to the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

(c) How this regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(c) and (e) authorize the Kentucky Law Enforcement Council to prescribe qualifications for attendance of law enforcement training course and to promulgate reasonable rules and regulations. This regulation is required to establish graduation requirements for the Department of Criminal Justice Training - Kentucky Police Corps.

(d) How this regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from the Department of Criminal Justice Training - Kentucky Police Corps Program.

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

(a) How the amendment will change this existing regulation: This is a new administrative regulation. Not applicable.

(b) The necessity of the amendment to this 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 regulation: Approximately 14 local law enforcement agencies in the Commonwealth shall be affected as a result of the Department of Criminal Justice Training - Kentucky Police Corps basic training course beginning in June 2002.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment: It is anticipated that agencies should experience positive results from the implementation of this regulation. Upon graduation, Kentucky Police Corps cadets will be assigned to various agencies for a period of 4 years. The Federal Police Corps Act (42 USC sections 14091 et seq.) authorizes

es the award of a scholarship to participants in the Police Corps who agree to work in a state or local police force after graduation. Additionally, each agency will receive, from the United States Department of Justice, \$10,000 for each year of service, for each Police Corps graduate hired.

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

(a) Initially: No additional state costs;

(b) On a continuing basis: No additional state costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this regulation: Federal funds received pursuant to the Police Corps Act, and the Kentucky Law Enforcement Foundation Program Fund, which is a restricted fund.

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

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

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this regulation because the regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY 503 KAR 3:090E

KRS 13A.190(2) provides that an emergency administrative regulation is one that must be placed into effect immediately in order to prevent a loss of federal or state funds. KRS 15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. The Department of Criminal Justice Training - Kentucky Police Corps Program has been created in accordance with the requirements of the Federal Police Corps Act (42 USC sections 14091 et seq.) to provide scholarships and educational assistance to Kentucky residents who wish to obtain a college education and pursue a career in law enforcement. The Federal Police Corps Act will provide scholarship funds of up to \$30,000 per participant in the Department of Criminal Justice Training - Kentucky Police Corps Program and is expected to benefit approximately thirty (30) participants annually. This emergency administrative regulation, 503 KAR 3:090E formally establishes the Kentucky Police Corps Program as required by federal law. This administrative regulation is promulgated as an emergency to prevent the loss of the scholarship funding available to Kentucky under the Federal Police Corps Act. An ordinary administrative regulation could not be promulgated since the course curriculum was not finalized and approved by the Kentucky Law Enforcement Council until their May, 2002 meeting. An ordinary administrative regulation will not suffice because it would not become effective prior to the beginning of the course of study for the Department of Criminal Justice Training - Kentucky Police Corps, which is scheduled for June 10, 2002. It is essential that the requirements of this administrative regulation be in place by the beginning of the course. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on June 6, 2002.

PAUL E. PATTON, Governor

JOHN W. BIZZACK, Ph.D., Commissioner

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JUSTICE CABINET Department of Criminal Justice Training (New Emergency Administrative Regulation)

503 KAR 3:090E. Department of Criminal Justice Training - Kentucky Police Corps Program.

RELATES TO: KRS 15A.070(1), 42 USC 14094, 14096, 14099
STATUTORY AUTHORITY: KRS 15A.070(1), (5), 42 USC
14094, 14099

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 14094(a) requires a state desiring to participate in the Police Corps Program to designate a lead agency to submit and administer the program in the state. Pursuant to KRS 15A.070(1), the Kentucky General Assembly authorized the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

Section 1. Assurances. To develop and implement interagency agreements to carry out the program, the Department of Criminal Justice Training - Kentucky Police Corps Program shall:

- (1) Work in cooperation with:
 - (a) Local law enforcement liaisons;
 - (b) Representatives of police labor organizations;
 - (c) Police management organizations; and
 - (d) Other state and local agencies.
- (2) Advertise the assistance available under the Police Corps Program plan;
- (3) Screen and select law enforcement personnel for participation in the Police Corps Program; and
- (4) Meet the requirements of 42 USC §14099.

Section 2. Application Process. (1) To participate in the Department of Criminal Justice Training - Kentucky Police Corps Program, an applicant shall:

- (a) Complete:
 1. An "Application for Admission" form;
 2. A "Release of Information to Agency" form;
 3. A "Criminal History Release" form; and
 4. A "Credit History Release" form; and
 - (b) Obtain letters of recommendation by at least two (2), but no more than (4) different persons, by requesting that they complete a "Recommendation Form" supplied by the department.
- (2) The recommendation forms shall be sent from the references directly to the department.

Section 3. Police Corps Selection Criteria. In addition to the requirements of 42 USC 14096, selection of Police Corps cadets shall be based upon the following criteria:

- (1) Academic achievement, based upon grades earned in:
 - (a) High school;
 - (b) Vocational school; or
 - (c) College;
- (2) Work experience and community involvement;
- (3) Special interests and athletics;
- (4) Letters of recommendations;
- (5) Personal statement and essay; and
- (6) Personal interview with Police Corps applicant.

Section 4. Assignment of Cadets to Police Forces. (1) A Police Corps cadet shall be assigned to a geographic area in which:

- (a) There is a greater need for additional law enforcement personnel; or
 - (b) He or she will be used more effectively.
- (2) Subject to the requirements of subsection (1) of this section, a Police Corps cadet shall be assigned to:
- (a) An area near his or her home; or
 - (b) Other requested area.
- (3) Assignment of a cadet to a police agency shall be made at the time of acceptance into the Police Corps Program. The assignment to an agency shall not be changed except as follows:
- (a) Prior to the start of the fourth year of undergraduate study if

the sponsoring police agency determines that they will be unable to hire the cadet;

(b) After the start of the fourth year of undergraduate study and before the completion of the four (4) year service requirement, the assignment may be changed based only upon:

1. Compelling reasons or to meet the needs of the Police Corps Program; and
 2. The consent of the cadet.
- (4) A Police Corps cadet shall not be assigned to served with a local police force:
- (a) Whose size has declined by more than five (5) percent since June 21, 1989; or
 - (b) Which has members who have been laid off, but not retired.
- (5) Except in case of agency emergency, Police Corps cadets shall be placed and kept on community and preventive patrol during their four (4) year service obligation.
- (6) Each year, there shall not be more than ten (10) percent of Police Corps cadets assigned to police agencies with statewide jurisdiction.

Section 5. Effective Training and Leadership. Cadets in the Kentucky Police Corps shall receive effective training and leadership.

Section 6. Refusal of Appointment or Removal. (1) The Police Corps Program may refuse to offer an appointment after completion of federal training or may remove a cadet from the program based upon:

- (a) Failure to make satisfactory progress in the course of educational study;
 - (b) A recommendation of removal by the Commissioner of the Department of Criminal Justice Training after violation of the conduct requirements in 503 KAR 3:100; or
 - (c) Other good cause.
- (2) If a cadet is refused appointment or removed from training, he or she shall have the right to request a hearing pursuant to KRS Chapter 13B.

Section 7. Employment Rights of Police Corps Cadets. A police agency requesting appointment of a Police Corps cadet shall, while the cadet is serving as a member of the force:

- (1) Provide the same rate of pay and benefits to the cadet as other officers with the same rank and tenure; and
- (2) Recognize the same rights under applicable agreements with labor organizations as other officers with the same rank and tenure.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Admission" form, DOCJT, (1/98 Edition);
 - (b) "Release of Information to Agency" form, DOCJT, (6/02 Edition);
 - (c) "Criminal History Release" form, DOCJT, (6/02 Edition);
 - (d) "Credit History Release" form, DOCJT, (6/02 Edition); and
 - (e) "Recommendation Form," DOCJT, (6/02 Edition).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: June 5, 2002
FILED WITH LRC: June 6, 2002 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephanie C. Bingham

- (1) Provide a brief summary of:
 - (a) What this regulation does: Establishes the Department of Criminal Justice Training - Kentucky Police Corps basic training course.
 - (b) The necessity of this regulation: The regulation is necessary so that the Department of Criminal Justice Training can fulfill its responsibility to establish, supervise, and coordinate training programs.

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(c) How this regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This regulation establishes the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

(d) How this regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the Department of Criminal Justice Training - Kentucky Police Corps Program and sets clear, reasonable and consistent requirements for application to and participation in the basic training course.

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

(a) How the amendment will change this existing regulation: This is a new regulation.

(b) The necessity of the amendment to this 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 regulation: Approximately 14 local law enforcement agencies in the Commonwealth shall be affected as a result of the Department of Criminal Justice Training - Kentucky Police Corps basic training course beginning in June 2002.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment: It is anticipated that agencies should experience positive results from the implementation of this regulation. Upon graduation, Kentucky Police Corps cadets will be assigned to various agencies for a period of 4 years. The Federal Police Corps Act (42 USC sections 14091 et seq.) authorizes the award of a scholarship to participants in the Police Corps who agree to work in a state or local police force after graduation. Additionally, each agency will receive, from the United States Department of Justice, \$10,000 for each year of service, for each Police Corps graduate hired.

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

(a) Initially: No additional state costs;

(b) On a continuing basis: No additional state costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this regulation: Federal funds received pursuant to the Police Corps Act, and the Kentucky Law Enforcement Foundation Program Fund, which is a restricted fund.

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

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

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this regulation because the regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY 503 KAR 3:100E

KRS 13A.190(2) provides that an emergency administrative regulation is one that must be placed into effect immediately in order to prevent a loss of federal or state funds. KRS 15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. The Department of Criminal Justice Training - Kentucky Police Corps has been created in accordance with the requirements of the Federal Police Corps Act (42 USC sections 14091 et seq.) to

provide scholarships and educational assistance to Kentucky residents who wish to obtain a college education and pursue a career in law enforcement. The Federal Police Corps Act will provide scholarship funds of up to \$30,000 per participant in the Department of Criminal Justice Training - Kentucky Police Corps Program and is expected to benefit approximately thirty (30) participants annually. This emergency administrative regulation, 503 KAR 3:100E establishes the conduct requirements and disciplinary procedures for the Department of Criminal Justice Training - Kentucky Police Corps. This administrative regulation is promulgated as an emergency to prevent the loss of the scholarship funding available to Kentucky under the Federal Police Corps Act. An ordinary administrative regulation could not be promulgated since the course curriculum was not finalized and approved by the Kentucky Law Enforcement Council until their May, 2002 meeting. An ordinary administrative regulation will not suffice because it would not become effective prior to the beginning of the course of study for the Department of Criminal Justice Training - Kentucky Police Corps, which is scheduled for June 10, 2002. It is essential that the requirements of this administrative regulation be in place by the beginning of the course. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on June 6, 2002.

PAUL E. PATTON, Governor
JOHN W. BIZZACK, Ph.D., Commissioner

JUSTICE CABINET Department of Criminal Justice Training (New Emergency Administrative Regulation)

503 KAR 3:100E. Department of Criminal Justice Training - Kentucky Police Corps basic training course cadet conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070(1), 42 USC 14091 et seq.

STATUTORY AUTHORITY: KRS 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) and (5) authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes the conduct requirements for cadets attending the Kentucky Police Corps basic training course conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Definitions. (1) "Cadet" means a person attending the Police Corps basic training course.

(2) "OPCLEE" means the Office of the Police Corps and Law Enforcement Education of the United States Justice Department.

(3) "Police Corps basic training" means the 1,290 1/2 hour council approved basic training course conducted by the department.

(4) "Police Corps Director" means the Director of the Police Corps section of the department, or his designee.

Section 2. Uniforms and Operator's License Required. A cadet shall provide the uniforms required in Section 7(8) of this administrative regulation and present a valid motor vehicle operator's license to participate in the Police Corps basic training course.

Section 3. Class Coordinator. (1) The class coordinator for a Police Corps basic training class shall also serve as its ombudsman.

(2) The class coordinator shall be available to:

(a) Assist cadets who experience problems during Police Corps basic training;

(b) Explain the Department of Criminal Justice Training - Kentucky Police Corps administrative regulations and position regarding cadet conduct and responsibilities; and

(c) Assist cadets with concerns that may adversely affect them or the department.

(3) The class coordinator shall ensure fair and equitable treatment for the cadets in his charge.

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Section 4. Removing an Unqualified Cadet from Police Corps Basic Training. If a cadet is not qualified to participate in the Police Corps basic training course, he shall:

(1) Be removed from Police Corps basic training by the:

- (a) Commissioner;
- (b) Director; or
- (d) Police Corps Director;

(2) Receive no credit for the part of the Police Corps basic training course he has completed.

(3) If a cadet is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(4) A cadet shall be considered unqualified if he:

(a) Files an incomplete or fraudulent application to attend Police Corps basic training, or otherwise fails to comply with admissions requirements;

(b) Does not meet all requirements for Police Corps participation as defined by the OPCLEE, including:

1. Not having received a bachelor's degree from an accredited four (4) year college or university;

2. Having served as a sworn police officer with the power of arrest, as defined by OPCLEE;

(c) Arrives at the beginning of the Police Corps basic training course physically unable to participate because of:

1. Physical injury; or

2. Being under the influence of alcohol or drugs (prescription or illegal); or

3. Failure of the physical training entry requirements as found in 503 KAR 1:150;

(d) Has had prior disciplinary action while at the department which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous department training course;

(e) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation.

Section 5. Gifts. Gifts from cadets to department staff members shall conform with the Executive Branch Code of Ethics (KRS 11A.040).

Section 6. Penalties for Misconduct. (1) The following penalties shall apply to a cadet's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The cadet is dismissed from the Police Corps basic training course, and all privileges are terminated. The cadet is ineligible for future Police Corps basic training courses, and may not reapply for admission to the department's basic training course for five (5) years from the date of expulsion.

(b) Suspension. The cadet is suspended from department training for a specified period of time, not to exceed one (1) year; all privileges are rescinded during the suspension period.

(c) Probation. The cadet is placed on probation for a specified period of time, not to exceed the final date of the Police Corps basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privileges, suspension, or expulsion.

(d) Loss of privileges. The cadet's privileges as specified in the imposed penalty are rescinded for a stated period of time. The cadet's participation in training activities is not affected.

(e) Written reprimand. The cadet is reprimanded in writing for violating a conduct or Honor Code requirement.

(f) Verbal warning. The cadet is warned verbally that he has violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a cadet has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a cadet has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or

subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to cadet. The department shall give written notice to a cadet of any penalty imposed upon him.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a cadet.

(b) A copy of any penalty imposed on a cadet shall be placed in his basic training file.

(c) Only the OPCLEE, the department, and the cadet shall have access to the penalty records in a cadet's basic training file unless broader access is required by law.

Section 7. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a cadet constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 8. Conduct Requirements. A cadet attending the Police Corps basic training course shall meet the following conduct requirements:

(1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the cadet's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A cadet shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, cadet, recruit or other department trainee, or guest. Penalty: verbal warning, written reprimand, probation, or suspension.

(3) General conduct, grooming. The cadet shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache shall be permitted if the cadet had the mustache upon arrival and it is kept neatly trimmed. A cadet's hair shall not be unkempt or over the collar. Penalty: verbal warning or written reprimand.

(4) General conduct, alcoholic beverages and other intoxicants.

(a) A cadet shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending Police Corps basic training, which shall include all dates of training and periods when residing in the dormitory. A cadet shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances. A cadet shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense. Testing shall be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the cadet has violated the provisions of this section. Testing may be randomly requested of all cadets. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(b) If a cadet has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the cadet may be impaired or may endanger himself or other persons or property. A cadet shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

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(5) General conduct, weapons and other dangerous devices.

(a) A cadet shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A cadet shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A cadet shall not have successfully completed Police Corps basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct, conduct unbecoming a cadet. A cadet shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a Police Corps basic training course. Depending on the nature of the conduct, the cadet shall be penalized by a verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion. Additionally, the appropriate prosecutorial authority shall be notified of the activity if it constitutes a felony or class A misdemeanor, and may be notified of other activity when appropriate.

(b) Engage in conduct which creates a danger or risk of danger to the cadet or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(8) Training activities, uniforms.

(a) A cadet shall maintain all issued uniforms and wear them as required by the department. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:

1. Clean, pressed and in good condition;
2. Appropriately sized to fit the cadet and not excessively loose, baggy, or tight;
3. Worn over a clean white tee-shirt, visible at the neck; and
4. Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) All other uniforms, including physical fitness uniforms, shall be worn in a manner as directed by the department.

(d) Jewelry. The cadet may wear:

1. One (1) ring per hand. A wedding and engagement ring worn together on the left hand shall be considered one (1) ring; or
2. Necklaces if worn under the tee-shirt and not visible. Penalty: verbal warning or written reprimand.

(e) A name tag, provided by the department, shall be worn on the left shirt-pocket flap while in navy blue uniform. Penalty: verbal warning or written reprimand.

(f) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(g) Additional clothing may be worn during a training activity if authorized by the instructor.

(9) Training activities, absences.

(a) A cadet is absent if he is not physically present in a class or other required department activity for ten (10) minutes or more. A cadet is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A cadet shall give advance notice of an absence when possible. Penalty for an unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from Police Corps basic training must be approved by the director, or Police Corps Director.

(c) If a cadet is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that training area.

(10) Training activities, breaks. Cadets shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A cadet shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A cadet shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(c) A cadet shall not engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(d) A cadet shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.

(a) A cadet shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or other evaluation result. A cadet shall not permit, assist or facilitate this conduct by another cadet. Penalty: suspension or expulsion.

(b) A cadet shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during Police Corps basic training. A cadet shall not permit, assist or facilitate this conduct by another cadet. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.

(a) During the Police Corps basic training course, when attending in Madison County, a cadet shall reside in the residence hall designated by the department.

(b) A cadet shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, probation.

(c) A cadet shall observe "lights out" by 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each cadet shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a cadet shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may

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be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A cadet residing at the residence hall shall not:

1. Have any person of the opposite sex in his room, or visit in the room of a cadet of the opposite sex without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have anyone, other than roommate, in his or her room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 9. Honor Code. (1) The cadet shall abide by the provisions of the Honor Code which reads as follows:

"We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As cadets of the Department of Criminal Justice Training, Police Corps basic training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion."

(2) The coordinator, in cooperation with the class shall designate a minimum of one (1) Honor Code representative during the first week of Police Corps basic training. The Honor Code representative may be replaced:

(a) In the case of nonperformance of duties, including conduct violations; or

(b) When the coordinator, in cooperation with the class, determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All cadets shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative will recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a cadet with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for the violation shall be solicited from the Honor Code representative.

Section 10. Department's Responsibilities to Sponsoring Agency. In order to keep the sponsoring agency advised of the cadet's progress and performance in Police Corps basic training so that the agency may adequately assess the cadet's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the cadet's sponsoring agency:

(1) Cadet performance report which shall be completed at six (6) week intervals and shall include cadet conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal

skills, and appearance.

(2) Immediate notice of specific nonperformance or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Disorderly conduct;

(b) Speeding; or

(c) Other behavior that gives rise to a citizen's complaint.

(4) Written notice of any conduct or Honor Code penalty imposed upon the cadet.

(5) Notice when a cadet has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(6) Notice when a cadet has been removed from training pending an initial appearance before the commissioner as defined in Section 11 of this administrative regulation, or when a cadet has been removed from training pending a disciplinary hearing as defined in Section 15(3) of this administrative regulation.

Section 11. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a cadet unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 11 through 17 of this administrative regulation. To have the authority to impose summary discipline, the staff member must have reasonable grounds to believe the cadet has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, Police Corps Director, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand.

(c) The Police Corps Director, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

(2) Before imposing a penalty summarily, the staff member shall give the cadet the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the cadet with the opportunity to give an explanation.

Section 12. Removal from Training Pending an Initial Appearance before the Commissioner. (1) When a charge is filed against a cadet, the commissioner or director, in consultation with the Police Corps Director, may remove the cadet from some or all training until the cadet's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the cadet would be dangerous or disruptive if not removed; or

(b) The cadet has been charged with misconduct for which suspension or expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty should the cadet be found guilty of the conduct violation.

(2) A cadet who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 13. Complaint. Anyone having reasonable grounds to believe that a cadet has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor, or Police Corps Director. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 14. Investigation by Police Corps Director or Section Supervisor. (1) If the Police Corps Director or section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the Police Corps Director or section supervisor shall:

(a) Take no action if none is justified by the evidence; or

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- (b) Impose appropriate summary discipline; or
- (c) File, with the legal officer, a written request that charges be brought against the cadet. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the cadet and witnesses shall be forwarded to the legal officer.

Section 15. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall:

- (a) File such charges against the cadet as he believes are justified by the evidence; or
- (b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.
- (4) The charging document shall:
 - (a) Be in writing;
 - (b) Particularly describe the alleged misconduct so as to reasonably inform the cadet of the nature of the allegation;
 - (c) State the time, date and place the cadet shall make an initial appearance before the commissioner to answer the charges;
 - (d) Be signed by the legal officer; and
 - (e) Be served upon the cadet at least forty-eight (48) hours before his initial appearance before the commissioner.

Section 16. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the cadet. If the cadet after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the cadet shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the cadet;
2. Explain to the cadet:

- a. The charges;
- b. His right to a hearing in accordance with KRS Chapter 13B; and
- c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the cadet the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the cadet of the penalty which shall be imposed if the cadet admits the charges or waives a hearing. The commissioner's recommendation regarding penalty shall be made in consultation with the Police Corps Director.

(d) The cadet shall be requested to answer the charges.

(e) If the cadet chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and
2. The commissioner shall impose a penalty.

(f) If the cadet denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the cadet within forty-eight (48) hours of the initial appearance before the commissioner.

(g) If the cadet remains silent or refuses to answer the charges, the commissioner, in consultation with the Police Corps Director, may suspend the cadet from training until the cadet answers the charges or the legal officer drops the charges.

(3) The commissioner, in consultation with the Police Corps Director, may remove the cadet from some or all training until the hearing if:

- (a) He has reasonable grounds to believe the cadet would be dangerous or disruptive if not removed; or
- (b) The cadet is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 17. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 18. Appeal. (1) A cadet may appeal an order entered by the commissioner which imposes a penalty adverse to the cadet by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: June 5, 2002
FILED WITH LRC: June 6, 2002 at 9 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephanie C. Bingham

(1) Provide a brief summary of:

(a) What this regulation does: Establishes the conduct and disciplinary procedures for the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

(b) The necessity of this regulation: The regulation is necessary so that the Department of Criminal Justice Training can fulfill its responsibility, as established in KRS 15A.070(1), to establish conduct and disciplinary requirements for the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

(c) How this regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This regulation establishes the conduct requirements of cadets attending the Department of Criminal Justice Training - Kentucky Police Corps basic training course, prescribes procedures for disciplinary action, and sets penalties.

(d) How this regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct rules and disciplinary procedures for the Department of Criminal Justice Training - Kentucky Police Corps basic training course.

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

(a) How the amendment will change this existing regulation: This is a new regulation.

(b) The necessity of the amendment to this 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 regulation: Approximately 14 local law enforcement agencies in the Commonwealth shall be affected as a result of the Department of Criminal Justice Training - Kentucky Police Corps basic training course beginning in June 2002.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this regulation, if new, or by the change if it is an amendment: It is anticipated that agencies should experience positive results from the implementation of this regulation. Upon graduation, Kentucky Police Corps cadets will be assigned to various agencies for a period of 4 years. The Federal Police Corps Act (42 USC sections 14091 et seq.) authorizes the award of a scholarship to participants in the Police Corps who agree to work in a state or local police force after graduation.

Additionally, each agency will receive, from the United States Department of Justice, \$10,000 for each year of service, for each Police Corps graduate hired.

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

- (a) Initially: No additional state costs.
- (b) On a continuing basis: No additional state costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this regulation: Federal funds received pursuant to the Police Corps Act, and the Kentucky Law Enforcement Foundation Program Fund, which is a restricted fund.

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

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

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this regulation because the regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this 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
703 KAR 5:070E**

This emergency administrative regulation establishes the specifics for the inclusion of students in special populations in the state-required assessment and accountability programs as required by KRS 158.6455. This emergency administrative regulation is necessary to enable local school districts and the Department of Education to comply with Section 1111(b)(3)(F) of Title I of the Federal Elementary and Secondary Education Act, PL 103-761, including the deadline for compliance (June 30, 2002) stated by the U.S. Department of Education in a letter to the Kentucky Commissioner of Education. This deadline to begin including limited English proficiency students in CATS after being enrolled in the school district for one (1) year is necessary to meet to avoid loss of federal funding for Kentucky's public schools. This emergency regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

PAUL E. PATTON, Governor
GENE WILHOIT, Commissioner
HELEN MOUNTJOY, Chairperson

**EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Kentucky Department of Education
(Emergency Amendment)**

703 KAR 5:070E. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
EFFECTIVE: June 12, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for In-

clusion of Special Populations in the State-Required Assessment and Accountability Programs," June 2002 [dated September, 1999], is [hereby] incorporated by reference.

(2) This material [document] may be inspected, [and] copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to [through] 4:30 p.m.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: June 12, 2002
FILED WITH LRC: June 12, 2002 at 3 p.m.

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 regulation was written to assist local school districts in understanding how to include students with disabilities, students attending schools classified as A2 through A6, students with limited English proficiency, students receiving instruction in a home/hospital (homebound instruction) setting, and students who have temporary medical conditions that necessitate accommodations and/or modifications for participation in the state-required assessment and accountability programs.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the inclusion of students in special populations in the state-required assessment and accountability programs as required by KRS 158.6455.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists local school districts in how to include students in special populations in the state-required assessment and accountability programs as required by KRS 158.6455.

(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 reflects changes in the existing regulation as it relates to the inclusion of student with limited English proficiency in the state-required assessment and accountability programs as mandated by the "No Child Left Behind Act of 2001".

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

(c) How the amendment conforms to the content of the authorizing statute: This amendment requires that students with limited English proficiency be included in the state-required assessment and accountability programs when they have been in a school or district for one full academic year prior to the year of the assessment in question.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist local education agencies in the inclusion of student with limited English proficiency in the state-required assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All superintendents, principals, teachers, parents, and students of local educational agencies in the state of Kentucky, and all supporting staff in the Kentucky Department 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: Local school districts and schools will have to ensure that all students with limited English proficiency who have been in the same school or district for one full academic year prior to the year of the assessment in question, or an English-speaking school for two full years prior to the assessment in question is included in the state-required assessment and accountability programs.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: There will be no additional costs to local education agencies to implement this administrative regulation. However, there will be a slight increase in costs for the Department of Education associated with the production and scoring of assessments as more students are included in the assessments.

(b) On a continuing basis: Slight cost increase for the Department of Education associated with test production and scoring.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding is within existing state funds already appropriated to the agency.

(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 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 fees or directly or indirectly increase any fee.

(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.

**STATEMENT OF EMERGENCY
907 KAR 1:055E**

This emergency administrative regulation is being promulgated to add physician assistant to the definition of health care provider for primary care centers, rural health clinics and federally-qualified health centers (FQHCs) and to add licensed clinical social worker and licensed psychologist to the definition of health care provider for FQHCs in order to comply with federal regulations. This action must be taken on an emergency basis to avoid the loss of federal funds. Failure to enact this administrative regulation on an emergency basis may result in a loss of federal financial participation. These federal funds are critical at this time due to the anticipated budget shortfall. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on November 30, 2001 as follows: the definition of health care provider was substantially changed by the addition of physician assistant for primary care centers, rural health clinics and federally-qualified health centers (FQHCs), and the addition of licensed clinical social worker and licensed psychologist for FQHCs. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
MARCIA R. MORGAN, Secretary

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physicians and Specialty Services
(Emergency Amendment)**

907 KAR 1:055E. Payments for primary care center, [and] federally-qualified health center, and rural health clinic services.

RELATES TO: KRS 205.560, 216B.010, 216B.130, 216B.990, Chapter 314, 42 CFR Part 491, Subpart A, 440.230, 42 USC 1396a [205.520]

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 216B.042, 216B.105, 42 CFR 405.2463, 440.130, 447.325, 45 CFR Part 74, 48 CFR Part 31, 42 USC 1396a(aa), b, d

EFFECTIVE: May 23, 2002

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance]. KRS 205.520(3) 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 the provisions for reimbursement

by the department [sets forth the method for determining amounts payable by the cabinet] for primary care center, [and] federally-qualified health center, and rural health clinic services.

Section 1. Definitions. (1) "Allowable costs" means costs that are incurred by a center or clinic that are reasonable in amount and proper and necessary for the efficient delivery of services.

(2) "Audit" means an examination, which may be full or limited in scope, of a clinic's or center's financial transactions, accounts, and reports as well as its compliance with applicable Medicare and Medicaid regulations, manual instructions, and directives.

(3) "Center" means a federally-qualified health center or a primary care center.

(4) "Change in scope of service" means a change in the type, intensity, duration, or amount of service.

(5) "Clinic" means a rural health clinic.

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

(7) "Federally-qualified health center" or "FQHC" means as defined in 42 CFR 405.2401.

(8) "Health care provider" means:

(a) A licensed physician;

(b) A licensed osteopathic physician;

(c) A licensed podiatrist;

(d) A licensed optometrist;

(e) A licensed and certified advanced registered nurse practitioner;

(f) A licensed dentist or oral surgeon;

(g) A certified physician assistant; and

(h) For an FQHC also means:

1. A licensed clinical social worker; and

2. A licensed clinical psychologist.

(9) "Interim rate" means a reimbursement fee established by the department to pay a FQHC, RHC, or primary care center for covered services prior to the establishment of a PPS rate.

(10) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(11) "Medicare Economic Index" or "MEI" means the economic index referred to in 42 USC 1395u(b)(3)(L).

(12) "PCC" or "primary care center" means an entity that has met the licensure requirements established in 902 KAR 20:058.

(13) "Percentage increase in the MEI" means as defined in 42 USC 1395u(i)(3).

(14) "PPS" means prospective payment system.

(15) "Rate year" means the twelve (12) month period beginning July 1 of each year for which a rate is established for a center or clinic under the prospective payment system.

(16) "Reasonable cost" means costs as determined by the applicable Medicare cost reimbursement principles set forth in 42 CFR Part 413.

(17) "RHC" or "rural health clinic" means as defined in 42 CFR 405.2401.

(18) "Visit" means a face-to-face encounter between a patient and a health care provider during which a FQHC, RHC, or PCC service is delivered.

Section 2. Provider Participation Requirements. (1) A participating center or clinic shall be enrolled in the Kentucky Medicaid Program.

(2) A FQHC shall be enrolled as a primary care center.

(3) A participating center or clinic and staff shall comply with all applicable federal, state, and local regulations concerning the administration and operation of a PCC, FQHC, or an RHC.

(4) A center or clinic performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

Section 3. Reimbursement. (1) For services provided on and after July 1, 2001, the department shall reimburse a PCC, FQHC, and RHC an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS) as required by 42 USC 1396a(aa).

(2) The department shall calculate a PPS base rate for an existing center or clinic in accordance with Section 4 of this adminis-

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trative regulation and for a new center or clinic in accordance with Section 5 of this administrative regulation.

(3) The department shall adjust a PPS rate per visit:

(a) By fifty (50) percent of the percentage increase in the MEI applicable to primary care services on January 1, 2002;

(b) By the percentage increase in the MEI applicable to primary care services on July 1 of each year, beginning July 1, 2002; and

(c) In accordance with Section 6 of this administrative regulation:

1. Upon request and documentation by a center or clinic that there has been a change in scope of services; or

2. Upon review and determination by the department that there has been a change in scope of services.

(4) A rate established in accordance with this administrative regulation shall not be subject to an end of the year cost settlement.

Section 4. Establishment of a PPS Base Rate for an Existing Provider. (1) The department shall establish a PPS base rate to reimburse an existing PCC, FQHC, and RHC 100 percent of its average allowable cost of providing Medicaid-covered services during a center's or clinic's fiscal years 1999 and 2000. A center's or clinic's fiscal year that ends on January 31 shall be considered ending the prior year.

(2) A center or clinic shall complete MAP 100601 annually and submit it to the department by the last calendar day of the third month following the center's or clinic's fiscal year end.

(3) The department shall:

(a) Use a center's or clinic's desk reviewed or audited cost reports for fiscal years ending February 1999 through January 2000 and February 2000 through January 2001;

(b) Trend the cost from the second base year forward to July 1, 2001 by the percentage of increase as measured by the HCFA hospital market basket index; and

(c) Calculate the average cost by dividing the total cost associated with FQHC, PCC, and RHC services by the total visits associated with the FQHC, PCC, and RHC services.

(4) If a center or clinic has only one (1) full year of cost report data, the department shall calculate a PPS base rate using a single audited cost report.

(5) The department shall adjust a PPS base rate determined in accordance with this section to account for an increase or decrease in the scope of services provided during fiscal year 2001 in accordance with Section 6 of this administrative regulation.

(6) Until the establishment of a PPS base rate by the department, a center or clinic shall be paid for services at an interim rate.

(7) Except for a center that has been receiving an incentive payment, the interim rate shall be the rate on file on June 30, 2001.

(8) A center that has been receiving an incentive payment shall have an interim rate based upon the average costs of providing services for fiscal years 1999 and 2000. The average shall be calculated in accordance with this section using unaudited cost report data

(9) A center shall not be eligible for an incentive payment for services provided on and after July 1, 2001.

Section 5. Establishment of a PPS Base Rate for a New Provider. (1) The department shall establish a PPS base rate to reimburse a new PCC, FQHC, and RHC 100 percent of its reasonable cost of providing Medicaid covered services during a center's or clinic's base year.

(2) Reasonable costs shall be determined by the department based on a center's or clinic's cost report used by the department to establish the PPS rate.

(3) Until a center or clinic submits a Medicaid cost report containing twelve (12) full months of operating data for a fiscal year, the department shall make payments to the center or clinic based on an interim rate.

(4) A new center or clinic shall submit a budget that sets forth:

(a) Estimates of Medicaid-allowable costs to be incurred by the center or clinic during the initial reporting period of at least twelve (12) months; and

(b) The number of Medicaid visits a center or clinic expects to provide during the reporting period.

(5) An interim payment shall be based on an annual budgeted or projected average cost per visit that shall be subject to reconciliation

after a Medicaid cost report with twelve (12) months of actual operating data has been received.

Section 6. Adjustments to a PPS Rate. (1) If a center or clinic changes its scope of services after the base year, the department shall adjust a center's or clinic's PPS rate by dividing a center's or clinic's total Medicaid costs by total Medicaid visits. A provider shall submit MAP 100501 to request a rate adjustment after a change in service.

(2) Total Medicaid costs shall be determined in accordance with the following:

(a) The Medicaid costs of existing services shall be determined by multiplying a center's or clinic's current Medicaid PPS rate by the number of Medicaid visits used to calculate the base Medicaid PPS rate;

(b) The Medicaid costs of a new service shall be determined by:

1. Adding:

a. The projected annual direct cost of a new service as determined from a center's or clinic's budgeted report; and

b. The administrative cost of a new service which shall be equal to the ratio of administrative costs to direct costs determined from the base year cost reports multiplied by a center's or clinic's projected direct cost of a new service; and

2. Multiplying the sum derived in subparagraph 1 of this paragraph by a center's or clinic's projected Medicaid utilization percentage for the change in service.

(3) The amount determined in subsection (2)(a) of this section shall be added to the amount determined in subsection (2)(b) of this section.

(4) The amount determined in subsection (3) of this section shall be divided by total visits to derive a center's or clinic's new PPS rate.

(5) Total Medicaid visits shall include:

(a) The annual number of Medicaid visits used in the calculation of the PPS base rate; and

(b) The projected annual number of Medicaid visits for a new service.

(6) The department shall adjust the PPS rate determined under this section to a final rate upon completion of:

(a) A Medicaid comprehensive desk review of a center's or clinic's cost report;

(b) A Medicaid audit of a center's or clinic's cost report; or

(c) A Medicare audit that has been reviewed and accepted by Medicaid of a center's or clinic's cost report.

Section 7. Limitations. (1) Except for a case in which a patient, subsequent to the first encounter, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider and multiple encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

(2) A vaccine available without charge to a FQHC, RHC, or PCC through the Vaccines for Children Program and the administration of the vaccine shall not be reported as a cost to the Medicaid Program.

Section 8. Out-of-state Providers. Reimbursement to an out-of-state FQHC or RHC shall be the rate on file with their state Medicaid agency.

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) A FQHC, PCC, or RHC may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement rate in accordance with 907 KAR 1:671.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 100501, Prospective Payment System Rate Adjustment, 11/01 edition"; and

(b) "MAP 100601, Scope of Services Survey Baseline Documentation, 11/01 edition".

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(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. [Primary Care Centers and Federally-qualified Health Centers. The cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet, on the following basis:

(1) Payment shall be made on the basis of reasonable allowable cost.

(2) Payment amounts shall be determined by application of the "Primary Care Center and Federally-qualified Health Center Reimbursement Manual" (revised July 1, 1991, and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of Medicare reimbursement principles. The Kentucky Medical Assistance Program Primary Care Center and Federally-qualified Health Center Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) 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.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4)(a) Effective January 1, 1989 all primary care centers and, effective April 1, 1990, all federally-qualified health centers, shall be placed on a universal rate year for purposes of payments.

(b) For the purpose of calculating interim rates, costs from the most recent audited cost report shall be used with costs trended to the beginning of the year (e.g., to January 1, 1989 for the first universal rate year) and indexed for inflation to the end of that year.

(5) As an incentive for cost efficiency, providers which at the beginning of the universal rate year have medical and nursing costs in the lowest one-fourth (1/4) of the array shall receive an incentive payment which is set at twenty (20) percent of the average composite interim rate of the incentive eligible group, with the incentive to be paid only on visits which are not in excess of 10,000. The entire interim payment shall be considered prospective in nature for the incentive eligible group in that there shall be no settlement after audit requiring a payback unless charges are less than payments; to the extent that cost exceeds the interim payments, an upward adjustment shall be made to compensate for the additional costs. At the time of settlement, the center shall receive the greater of the interim payment, or actual cost, not to exceed charges.

(6) Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers and federally-qualified health centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the centers that the drugs were used to provide immunizations to Medicaid recipients.

(7) Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers and federally-qualified health centers is supported by the Medicare reimbursement principles which shall serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby providers shall be paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate shall be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each provider shall make available to the cabinet at the end of each fiscal reporting period, and at intervals as the cabinet may re-

quire, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the provider shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center or federally-qualified health center shall not be permitted. When a primary care center or federally-qualified health center elects to participate as such in the medical assistance program it shall not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this administrative regulation for services not covered by 907 KAR 1:054, primary care center and federally-qualified health center services, nor for that portion of a center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center and Federally-qualified Health Center Reimbursement Manual." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, the costs shall be disallowed.

Section 5. The amendments to this administrative regulation shall be applicable with regard to payments for services provided on or after July 1, 1991.]

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: May 21, 2002

FILED WITH LRC: May 23, 2002 at 1 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Teresa Goodrich or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for primary care center, federally-qualified health center, and rural health clinic services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse primary care centers, federally-qualified health centers, and rural health clinics for services provided to Medicaid recipients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse primary care centers, federally-qualified health centers, and rural health clinics for services provided to Medicaid recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for primary care center, federally-qualified health centers, and rural health clinics.

(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 regulation is being amended to add physician assistant to the definition of health care provider and for FQHC providers, add licensed clinical social worker and licensed psychologist to the definition of health care provider.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the state into compliance with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms by ensuring that payments made to primary care centers, federally-qualified health centers, and rural health clinics are made for services provided by individuals entitled by federal regulation to generate a billable event.

(d) How the amendment will assist in the effective administration of the statutes: This amendment inserts within the definition of health care provider, additional individuals that as employees of a primary care center, a federally-qualified health center, or a rural health clinic may generate a billable event.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation establishes reimbursement for all primary care centers and federally-qualified health centers (47) and rural health clinics (76).

(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 allow a greater choice of health care provider employee types for the above groups.

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

(a) Initially: Based on our review, the addition of physician assistants in 3 three facility types and the addition of licensed clinical social workers and licensed clinical psychologists in only the FQHCs will generate additional billings and, therefore, increase program costs, but the amount is indeterminable. Due to implementing the prospective payment system in the previous E regulation, first year expenditures should decrease by approximately \$2,132,178. This amount reflects the rate adjustments required to comply with changes mandated by the Center for Medicaid Services (CMS) under section 702 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000. It also reflects the annual savings of \$3.9 million from ceased incentive payments in the primary care center program.

(b) On a continuing basis: For subsequent years the savings should be about 2% of the total program costs annually, depending on how rates for new facilities and new services for existing facilities are determined. From the elimination of incentive payments in the primary care center program, an annual savings of 3.9 million will be an on-going savings.

(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 the implementation of this administrative regulation are federal funds authorized by the Title XIX and Title XXI of the Social Security Act and matching funds of general and agency appropriations. Federal funds of \$1,491,245 (69.94%) and state matching funds of \$640,933 (30.06%) will be saved.

(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 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? 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 whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. Local health departments that enrolled in the Medicaid Program as primary care centers.

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 can-

not be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Local health departments enrolled as primary care centers may employ physician assistants instead of physicians to provide primary care services which may result in a reduction of expenditures and a potential increase in revenues attributable to additional staffing.

STATEMENT OF EMERGENCY
907 KAR 3:030E

The cabinet has determined it is necessary to amend the Medicaid Program to amend the IMPACT Plus Program's eligibility criteria in order to direct the program's limited resources to children who most need them and are at greatest risk of institutionalization. This emergency administrative regulation must be implemented on an emergency basis in order to prevent an imminent threat to the public health, safety, or welfare of Medicaid recipients who, although in the greatest need for services, may be unable to receive them due to current eligibility criteria impeding the Department for Medicaid Services ability to best utilize the IMPACT Plus Program's limited resources. In addition, without these amendments the continued funding of the IMPACT Plus Program is at risk. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed October 19, 2001, in that it amends IMPACT Plus eligibility criteria to direct services to children who most need them and are at the greatest risk of institutionalization. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
MARCIA R. MORGAN, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Medicaid Services for
Mental Health and Mental Retardation
(Emergency Amendment)

907 KAR 3:030E. Coverage and payments for IMPACT Plus services.

RELATES TO: KRS 205.520, 205.8451(9), 309.080, 309.130, 314.042, 319.050, 319.056, 319.064, 335.080, 335.100, 335.300, 335.332, 335.500, 335.505, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a, d, n(g) [s]

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.560 [1998 Ky. Acts ch. 426, sec. 4(3)]

EFFECTIVE: May 21, 2002

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) 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 provides for coverage and payments for IMPACT Plus services provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Behavioral health organization" means:

(a) A hospital licensed and operating in accordance with 902 KAR 20:009, 902 KAR 20:012 and 902 KAR 20:016 or 902 KAR 20:170 and 902 KAR 20:180;

(b) A community mental health center licensed and operating in accordance with 902 KAR 20:091;

(c) A child caring facility licensed in accordance with 922 KAR 1:305 and operating in accordance with 922 KAR 1:300, 922 KAR 1:380 and 922 KAR 1:390;

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(d) A child placing facility licensed in accordance with 922 KAR 1:305 and operating in accordance with 922 KAR 1:310;

(e) An organization accredited by the Joint Commission on Accreditation of Healthcare Organizations or the Council on Accreditation for Children and Family Services; or

(f) A facility, agency, institution, organization, or business that is approved by DCBS and MH/MR to provide a service covered by this administrative regulation using standards of participation approved by the department.

(2) "Behavioral health professional" means:

(a) A psychiatrist;

(b) A physician licensed in Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner certified and practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced registered nurse practitioner licensed and practicing in accordance with KRS 314.042;

(g) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(h) A professional counselor certified and practicing in accordance with KRS 335.500;

(i) A professional art therapist certified and practicing in accordance with KRS 309.130; or

(j) An alcohol and drug counselor certified and practicing in accordance with KRS 309.080.

(3) "Behavioral health professional under clinical supervision" means:

(a) A psychologist certified and practicing in accordance with KRS 319.056;

(b) A psychological associate licensed and practicing in accordance with KRS 319.064;

(c) A marriage and family therapist associate licensed and practicing in accordance with KRS 335.332;

(d) A social worker certified and practicing in accordance with KRS 335.080; or

(e) A professional counselor associate certified and practicing in accordance with KRS 335.505.

(4) "Collaborative service plan" means an individualized written plan that specifies a therapeutic intervention and other services that are required by a recipient and that meets the requirements of Section 5(7) of this administrative regulation.

(5) "College or university" means an institution accredited by one (1) of eleven (11) regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education, and, if a Kentucky institution, licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; if an out-of-state institution, licensed in its home state if licensure is required in that state.

(6) "Community mental health center" means an organization licensed and operating in accordance with 902 KAR 20:091.

(7) "DCBS" means the Department for Community Based Services.

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

(9) "Home based services" means a service delivered to a recipient who resides in the home of a parent or guardian.

(10) "IMPACT Plus" means a program of community based behavioral health services provided through an agreement between the department and the Department for Public Health.

(11) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(12) "MH/MR" means the Department for Mental Health and Mental Retardation Services.

(13) "Professional equivalent" is defined in 907 KAR 1:372.

(14) "Psychiatric residential treatment facility" is defined in KRS 216B.450(4).

(15) "Recipient" is defined in KRS 205.8451(9).

(16) "Subcontractor" means a person, a facility, agency, institution, organization, or business that is subcontracted by DCBS or MH/MR to provide a service in accordance with this administrative regulation.

(17) "Targeted case management service" means a service provided pursuant to 42 USC 1396n.

(18) "Title V agency" means the Department for Public Health.

Section 2. Title V Interagency Agreement. Services provided as specified in Section 6 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Eligibility. A recipient under twenty-one (21) years of age shall be eligible to receive a medically-necessary service covered in Section 6 of this administrative regulation if the recipient:

(1) Was determined eligible for IMPACT Plus services prior to the effective date of this administrative regulation and has not been determined ineligible pursuant to Section 4(2) of this administrative regulation; or

(2) Is in the custody or under the supervision of the state or at risk of being in the custody of the state; and

(a) If in a hospital or psychiatric residential treatment facility, would meet the criteria of Section 4(1) of this administrative regulation if discharged; or

(b) If not in hospital or psychiatric residential treatment facility, meets the criteria of Section 4(1) of this administrative regulation.

Section 4. Criteria for At Risk of Institutionalization. (1) A recipient shall be at risk of institutionalization if the recipient:

(a)1. Has been individually assessed face-to-face by a behavioral health professional or a behavioral health professional under clinical supervision and determined to require immediate short-term residential crisis stabilization as the sole service in accordance with Section 6(14) of this administrative regulation; or

2. Meets all of the following criteria:

a. Has a severe, persistent, Axis I diagnosis other than dementia or substance abuse, established in the "The Diagnostic and Statistical Manual of Mental Disorders, fourth edition", DSM IV™, Copyright © 1994, American Psychiatric Association published by the American Psychiatric Association;

b. Has documentation of a severe behavioral health problem related to the diagnosis that has persisted in the home, school, and community setting during the past six (6) months and has been determined by a behavioral health professional to be at high risk of continuing for six (6) months; and

c. Requires a coordinated and intensive plan of medically-necessary community based behavioral health services that can reasonably be expected to improve the recipient's condition or prevent further regression so that the recipient may be discharged to a less intensive behavioral health service or program in an anticipated six (6) month time frame; and

(b) Meets one (1) of the following criteria:

1. A less intensive behavioral health service or program will not meet the recipient's treatment needs;

2. An appropriate and less intensive behavioral health service or program is not available or accessible; or

3. An appropriate and less intensive behavioral health service or program is available and accessible, but the recipient has a severe concurrent Axis II or Axis III diagnosis established in the "Diagnostic and Statistical Manual of Mental Disorders, fourth edition" DSM IV™, copyright © 1994, American Psychiatric Association published by the American Psychiatric Association, that complicates the treatment of the Axis I condition.

(2) A recipient shall be considered no longer at risk of institutionalization and not eligible for IMPACT Plus services if:

(a) A determination has been made by a behavioral health professional or a behavioral health professional under clinical supervision, that the only service necessary was immediate short-term residential crisis stabilization; and

1. A period of less than ten (10) days residential crisis stabilization was provided, and the recipient no longer needs such service; or

2. Ten (10) days of residential crisis stabilization has been pro-

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vided; or

(b) The recipient no longer meets the criteria specified in subsection (1)(b) and (c) of this section.

Section 5. Standards for a Covered Service. (1) The department may prior authorize one (1) unit of a targeted case management service upon determination by the department that a recipient meets the eligibility requirements in Section 3 of this administrative regulation.

(2) A service covered in accordance with Section 6 of this administrative regulation shall be prior authorized by the department based on documentation of medical necessity.

(3) A covered service shall be provided in the least restrictive setting appropriate for the recommended treatment or care.

(4) A covered service shall be provided by a behavioral health professional, a behavioral health professional under clinical supervision, or by a behavioral health organization.

(5) A therapeutic group residential service shall not be covered outside the geographical boundaries of Kentucky unless requirements established in 907 KAR 3:035 have been met.

(6) Except for an immediate residential crisis stabilization service, a therapeutic group residential service, a therapeutic foster care service, and a unit of targeted case management approved upon eligibility determination, a covered service shall be provided in accordance with a collaborative service plan.

(7) A collaborative service plan shall:

(a) Support the level and type of care to be provided;

(b) Be recommended by a team in a meeting that shall include:

1. The parent, guardian, or caregiver of a recipient who is under eighteen (18) years of age;

2. A clinical professional that shall be one (1) of the following:

a. A behavioral health professional;

b. A behavioral health professional under clinical supervision; or

c. A community mental health center professional equivalent who is currently providing therapy services for the recipient;

3. A provider of targeted case management services as specified in Section 6(1) of this administrative regulation; and

4. If recommended by the parent, guardian, or caregiver of a recipient who is under eighteen (18) years of age or the recipient if over eighteen years (18) of age, other individuals who have knowledge or special expertise regarding the recipient who are willing to participate;

(c) Describe a coordinated plan of medically-necessary community based behavioral health services that specifies a modality, frequency, intensity and duration of services sufficient to maintain the recipient in the community; and

(d) Identify the following:

1. A program of therapies, activities, interventions or experiences designed to accomplish the plan;

2. The behavioral health professional, behavioral health professional under clinical supervision or the professional equivalent who shall manage the continuity of care;

3. Interventions by caregivers in the home, school, and community setting that support a recipient's ability to be maintained in the community;

4. Behavioral, social and physical problems with interventions and objective, measurable goals;

5. A discharge criteria for each of the requested services that specifies the client case behavioral indicators for discharge from the service, the expected service level that would be required upon discharge, and the identification of the intended provider to deliver services upon discharge;

6. A crisis action plan that progresses through a continuum of care that begins with the use of natural supports and progresses through low to high intensity services or inpatient services; and

7. A plan for transition to a lower intensity of services and for discharge from IMPACT Plus services.

(8) A therapeutic foster care service as specified in Section 6(12) of this administrative regulation, or a therapeutic group residential service as specified in Section 6(13) of this administrative regulation, shall not be authorized after the effective date of this administrative regulation unless the following requirements are met:

(a) The recipient is discharged to a residential group or therapeutic foster care service from a hospital or crisis stabilization pro-

gram;

(b) Home based services are not immediately appropriate, available, or accessible;

(c) A prospective plan for home based IMPACT Plus services is proposed that identify home based IMPACT Plus services and providers;

(d) A plan for out-of-home services is proposed that can reasonably be expected to improve the recipient's condition so that the recipient may be discharged to a home based program of IMPACT Plus services in an anticipated three (3) month time frame; and

(e) The plan identifies the level of family or guardian involvement that is required to facilitate the discharge to home based services and the family agrees to participate as outlined in the plan.

(9) A targeted case management service as specified in Section 6(1) of this administrative regulation shall be authorized for delivery in the county to which the child shall be discharged from the residential or foster care placement for home based services during the month prior to the anticipated discharge.

Section 6. Covered Services. (1) Targeted case management.

(a) A targeted case management service shall be an activity that assists a recipient in accessing needed medical, social, educational, and other support services that shall include the following:

1. A case management assessment that shall include:

a. Documentation of a multiaxial assessment that includes descriptions of the behaviors or symptoms upon which the diagnosis is based;

b. Documentation of the date of a recipient's initial diagnosis including the professional and agency providing the diagnosis;

c. Description of the impact of the diagnosis over a period of time; and

d. Description of all systems for which the recipient needs coordination of services;

2. Assistance in developing, coordinating, and accessing services in the collaborative service plan;

3. Coordination of collaborative team meetings to develop, review and modify a collaborative service plan;

4. Facilitation of the implementation of a collaborative service plan;

5. Four (4) documented contacts per month made on separate days including one (1) face-to-face contact with a recipient and one (1) face-to-face contact with a parent or guardian or primary caregiver;

6. Monitoring a recipient's progress and compliance with treatment;

7. Advocating for a recipient to ensure appropriate, timely, and effective treatment and support services;

8. Participation in the development of other human service plans for a recipient;

9. Development of a plan of transition from IMPACT Plus services for a recipient, beginning at fourteen (14) years of age, or younger if recommended by the collaborative service team;

10. Provision to a recipient of a list of all IMPACT Plus enrolled subcontractors authorized to provide a service, pursuant to a collaborative service plan, for the purpose of selecting a provider; and

11. Provision to a recipient of information about the availability of a service if a service pursuant to this administrative regulation is not available.

(b) Targeted case management shall not include:

1. The actual provision of a treatment;

2. An outreach activity to a potential recipient;

3. An administrative activity associated with a Medicaid eligibility determination or application processing;

4. Institutional discharge planning;

5. A transportation service; or

6. A duplicate payment made to another public agency or private entity for the same purpose.

(c) A provider of targeted case management shall be a person who is employed by:

1. DCBS as a case manager or social worker providing services to an individual in the custody of or under the supervision of DCBS;

2. A community mental health center as a provider of targeted case management services in accordance with 907 KAR 1:525; or

3. A behavioral health organization and who shall meet the fol-

lowing requirements:

a. Have a bachelor of arts or sciences degree in a behavioral science from a college or university. A behavioral science shall include psychology, sociology, social work, human services, or special education;

b. Have completed one (1) year of employment working directly with children after completion of educational requirements. A master's degree in a behavioral science may substitute for the one (1) year of experience;

c. Have completed a case management training program provided by MH/MR within six (6) months of the date of employment; and

d. Receive weekly face-to-face supervision by a behavioral health professional, a behavioral health professional under clinical supervision, or a case manager who meets the requirements of this subparagraph and has two (2) years of case management experience.

(2) A behavioral health evaluation shall:

(a) Be a face-to-face evaluation of a recipient provided in accordance with a recipient's collaborative service plan to assess a behavioral health disorder and include at a minimum:

1. A multi-axial assessment that includes a description of the behaviors or symptoms upon which any diagnosis is based;

2. Documentation of the date of the recipient's initial diagnosis including the professional and agency providing the diagnosis, if available;

3. A description of the impact of the diagnosis over time; and

4. A description of all systems for which the recipient needs coordination of services; and

(b) Be provided by a behavioral health professional.

(3) An individual therapy service shall be:

(a) A face-to-face behavioral therapy service provided in accordance with a recipient's collaborative service plan and provided to a recipient individually; and

(b) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(4) A group therapy service shall be:

(a) A face-to-face behavioral health therapy service provided in accordance with a recipient's collaborative service plan and provided to a recipient in a group setting not to exceed eight (8) individuals; and

(b) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(5) A collateral service shall be:

(a) A face-to-face behavioral health consultation or service planning meeting with a parent, legal representative, school personnel, or other person with custodial control or supervision of the recipient;

(b) Provided in accordance with a collaborative service plan or as part of the service planning process; and

(c) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(6) A therapeutic child support service shall be:

(a) A therapeutic service provided in accordance with a recipient's collaborative service plan to assist the recipient or the recipient's family on behalf of the recipient, in understanding, treating, identifying, or coping with the recipient's behavioral health disorder;

(b) Provided directly to a recipient or family and shall include:

1. Therapeutic intervention and support provided to a recipient transitioning to adulthood including:

a. An assessment of the recipient's aptitude for vocational or skill training;

b. Monitoring of the recipient's progress toward transition; or

c. Assistance with developing skills and emotional readiness for an independent living setting;

2. Behavior management skills training including:

a. Therapeutic intervention and support provided to a parent, guardian, or caregiver in implementing a behavioral management plan;

b. Individual instruction for a recipient or a parent, guardian, or caregiver on recognizing or coping with a recipient's disruptive behavior; and

c. Training a recipient, parent, guardian, or caregiver about appropriate behavior and supportive adult intervention; or

3. In-home support including:

a. Assessment of a recipient's living situation;

b. Consultation in a recipient's home with a recipient or a recipient's parent, guardian, or caregiver;

c. Training of a parent, guardian, caregiver, or a family member in therapeutic techniques; and

d. Mentoring with a recipient to model appropriate social behavior or to assist a recipient with building social skills; and

(c) Provided by a person who is employed by a behavioral health organization; and

1. Meets the following minimum qualifications for a professional providing a therapeutic support service:

a. Has a bachelor's degree from a college or university or is a registered nurse licensed in accordance with KRS 314.041;

b. Has one (1) year experience working with children who have behavioral health needs. A master's degree from a college or university shall substitute for the required experience;

c. Has sixty (60) hours of training in children's behavioral health or three (3) college level credits from a college or university in courses related to child development or services to children; and

d. Receives weekly face-to-face supervision by a behavioral health professional or a behavioral health professional under clinical supervision; or

2. Meets the following requirements for a paraprofessional providing a therapeutic support service:

a. Has a high school or general equivalency diploma;

b. Has one (1) year of documented supervised experience working in a human service program or one (1) year of education from a college or university;

c. Receives weekly face-to-face supervision from a behavioral health professional or a behavioral health professional under clinical supervision; and

d. Has six (6) months documented experience working with children in a supervised program setting if the therapeutic support service is provided one-on-one to a recipient outside a directly supervised setting.

(7) A parent-to-parent support service shall be:

(a) Provided face-to-face to a recipient's parent, guardian, or caregiver and shall consist of:

1. Provision of information about IMPACT Plus services including how to effectively participate in the service planning process and how to access needed services, including emergency services;

2. Assistance in advocating on behalf of the recipient;

3. Provision of information regarding the nature, purpose, and anticipated benefits obtained from accessing targeted case management and other IMPACT Plus services;

4. Therapeutic intervention and support provided to a parent, guardian, or caregiver in implementing a behavioral management plan;

5. Assistance in understanding how to implement and how to document implementation of a recipient's behavior management plan;

6. Provision of information concerning the scope of responsibility of the principal child-serving agencies;

7. Assistance in the establishment and maintenance of linkages with formal and informal supportive services;

8. Assistance in the establishment of and sustainment of support groups for parents, guardians, and caregivers of recipients; or

9. Assistance in the development of and implementation of a plan to transition the recipient from IMPACT Plus services;

(b) Provided in accordance with a recipient's collaborative service plan by a parent of a child who has a behavioral health disorder and who has received at least one (1) state funded service for that child's disability and who:

1. Is employed by a behavioral health organization;

2. Has been approved by MH/MR following completion of ten (10) hours of initial and continuing annual training;

3. Is directly supervised by a behavioral health professional or a behavioral health professional under clinical supervision; and

4. Receives weekly face-to-face supervision from a behavioral health professional or a behavioral health professional under clinical supervision; and

(c) Provided by a person not related to or living with the recipient receiving the parent-to-parent support service.

(8) An after-school or summer program service shall:

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(a) Consist of a structured program of rehabilitative and therapeutic activities that focus on the development of appropriate behaviors and social skills that includes the following;

1. Individual and group rehabilitative and therapeutic activities;
2. Behavior management and social skills training;
3. Independent living skills training for a recipient fourteen (14) years of age and older;

4. Scheduled activities to promote parent or caregiver involvement and to empower the family to meet the individual's needs; and
5. The development with the individual and parent or caregiver of a crisis plan for nonprogram hours;

(b) Be provided in accordance with the recipient's collaborative service plan;

(c) Have a minimum recipient-to-staff ratio of four (4) children to one (1) staff. A therapeutic activity shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and

(d) Be provided by a behavioral health professional or a behavioral health organization and shall have daily on-site supervision by a behavioral health professional or a behavioral health professional under clinical supervision.

(9) A day treatment service shall:

(a) Consist of an organized, behavioral health program of treatment and rehabilitative services;

(b) Have unified policies and procedures approved by the local education authority and the provider of the day treatment service that shall address program philosophy, admission and discharge criteria, admission and discharge process, staff training and integrated case planning and include the following;

1. Individual and group therapies;
2. Behavior management and social skill training;
3. Independent living skill training for recipients fourteen (14) years of age and older;

4. Scheduled activities to promote parent or caregiver involvement and to empower the family to meet the recipient's needs;

5. Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

6. The development with the individual and parent or caregiver of a crisis plan for nonprogram hours;

(c) Be provided:

1. In collaboration with the special education services or other available education services of the local education authority;

2. On school days or during scheduled breaks;

3. In coordination with the recipient's individual educational plan, if the recipient has an individual educational plan;

4. By a behavioral health organization;

5. Under the supervision of a behavioral health professional or a behavioral health professional under clinical supervision;

6. Through a linkage agreement with the local education authority that specifies the responsibility of the authority and the provider for:

a. Appropriately-licensed teachers and provision for their professional development;

b. Educational supports (classroom aides and textbooks);

c. Educational facilities;

d. Physical education and recreational therapies;

e. Transportation; and

f. Transition planning; and

7. In accordance with a recipient's collaborative service plan;

(d) Not be provided as homebound instruction;

(e) Have a minimum recipient-to-staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and

(f) Exclude a service covered by 907 KAR 1:715.

(10) A partial hospitalization service shall:

(a) Consist of a therapeutic environment with an organized, intensive program that provides for the comprehensive assessment, diagnosis, and treatment of complex behavioral health needs that shall:

1. Have unified policies and procedures that address program philosophy, admission and discharge criteria, admission and discharge process, staff training and integrated case planning;

2. Offer less than twenty-four (24) hour daily care five (5) to seven (7) days per week; and

3. Include the following:

a. Daily oversight and management by a psychiatrist that includes daily communication with staff delivering direct services and face-to-face contact with the recipient one (1) or more times per week;

b. Continuous nursing coverage;

c. A multidisciplinary treatment team;

d. Rehabilitative therapy;

e. Individual and group therapies;

f. Medication evaluation, education, and management;

g. Behavior management and social skills training;

h. Treatment based schooling provided by the local education authority as required by law;

i. Scheduled activities that promote family involvement; and

j. The development with a recipient and a parent or caregiver of a crisis plan for nonprogram hours;

(b) Be provided by a hospital licensed in accordance with 902 KAR 20:009 and 902 KAR 20:016 or 902 KAR 20:170 or a community mental health center. A provider shall have a linkage agreement with the local education authority that specifies the responsibility of the authority and the provider for:

1. Appropriately-licensed teachers and provisions for their professional development;

2. Educational supports (classroom aides and textbooks);

3. Educational facilities;

4. Physical education and recreational therapies;

5. Transportation; and

6. Transition planning;

(c) Be provided in accordance with a collaborative service plan;

(d) Have a minimum recipient-to-staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and

(e) Not include a service covered by 907 KAR 1:715.

(11) An intensive outpatient behavioral health service shall:

(a) Consist of a structured behavioral health program of individual and group therapeutic activities provided in accordance with a recipient's collaborative service plan;

(b) Be provided by a provider of an intensive outpatient behavioral health service that shall have a minimum recipient-to-staff ratio of four (4) children to one (1) staff;

(c) Be provided under the supervision of a behavioral health professional or a behavioral health professional under clinical supervision; and

(d) Be provided at least three (3) times per week for a minimum of two (2) hours per day by a:

1. Behavioral health professional;

2. Behavioral health professional under clinical supervision;

3. Behavioral health organization; or

4. Facility licensed as a nonmedical and nonhospital based alcohol or other drug abuse treatment program provider in accordance with 908 KAR 1:370 within its scope of practice.

(12) A therapeutic foster care service shall:

(a) Consist of a therapeutic environment and include twenty-four (24) hour supervision and treatment in a family home by a therapeutic foster parent who shall:

1. Be employed or contracted and supervised by a child placing agency licensed in accordance with 922 KAR 1:305 and functioning in accordance with 922 KAR 1:310;

2. Complete thirty (30) hours of preservice training using a curriculum approved by DCBS and MH/MR;

3. Receive twenty four (24) hours of training annually related to the care of a child with complex treatment needs of which no more than six (6) hours shall be provided through individual consultation;

4. Daily implement the behavior management plan and document behaviors, responses and interventions;

5. Prepare a weekly progress summary; and

6. Receive face-to-face supervision and support in the therapeutic foster care home every other week by a behavioral health professional or a behavioral health professional under clinical supervision who is employed by a child placing agency; and develop and monitor an individualized treatment plan that shall include:

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a. A behavior management plan;

b. A crisis action plan that progresses through a continuum of care that begins with the use of natural supports and progresses through low intensity services to high intensity services or inpatient services;

c. Identified supports for the foster parent such as a foster parent support group;

d. A plan for the involvement and visitation of a recipient with the birth family, guardian, or other significant persons unless prohibited by the court, including overnight off-site family visits pursuant to the individualized treatment plan; and

e. Services and planning beginning at admission to facilitate discharge of a recipient to an identified plan for home based services; and

(b) For services authorized after the effective date of this administrative regulation, meet the following requirements:

1. Be provided in accordance with a treatment plan that can reasonably be expected to improve the recipient's condition so that the recipient may be discharged to a home based services program of IMPACT Plus services in an anticipated three (3) month time frame; and

2. Be provided in accordance with an individualized treatment plan developed with the participation of the parent or guardian that identifies the level of family or guardian involvement that is required to facilitate the discharge to home based services and the family agrees to participate as outlined in the individualized treatment plan.

(13) A therapeutic group residential service shall:

(a) Consist of a therapeutic environment in a group residential facility with twenty-four (24) hour supervision that shall include:

1. A program of individual and group therapies;
2. Behavior management and social skills training;
3. Scheduled activities that promote family involvement;
4. Independent living skills training for recipients age fourteen (14) years of age and older;

5. After school and summer programs; and

6. Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services; and

(b) Be directed by a residential treatment plan that:

1. Is developed, monitored and updated in response to any change in a recipient's condition by a behavioral health professional or a behavioral health professional under clinical supervision who is employed by a child caring agency; and

2. At a minimum includes:

a. An individualized behavior management plan;

b. A crisis intervention plan;

c. A plan for the involvement and visitation of the recipient with the birth family, guardian, or other significant persons unless prohibited by the court including overnight off-site family visits; and

3. Has services and planning beginning at admission to facilitate discharge of a recipient to an identified plan for home based services.

(c) Have professional and support staff that daily implements the behavior management plan, documents observed behaviors, responses and interventions, and prepares a weekly summary note of status. Support staff shall receive weekly supervision by a behavioral health professional or a behavioral health professional under clinical supervision; and

(d) Be provided by:

1. A child-caring facility licensed in accordance with 922 KAR 1:305; or

2. A facility licensed as a nonmedical and nonhospital based alcohol or other drug abuse treatment provider in accordance with 908 KAR 1:370 within the scope of its practice;

(e) For services authorized after the effective date of this administrative regulation, meet the following requirements:

1. Be provided in accordance with a treatment plan that can reasonably be expected to improve the recipient's condition so that the recipient may be discharged to a home based program of IMPACT Plus services in an anticipated three (3) month time frame; and

2. Be provided in accordance with an individualized treatment plan developed with the participation of the parent or guardian that identifies the level of family or guardian involvement that is required

to facilitate the discharge to home based services and the family agrees to participate as outlined in the plan.

(14) A residential crisis stabilization service shall:

(a) Consist of a brief stay not to exceed ten (10) consecutive days in a therapeutic environment that has an organized, intensive program that provides for the comprehensive assessment, diagnosis, and treatment of complex behavioral health needs and shall include:

1. A face-to-face behavioral health assessment by a behavioral health professional or a behavioral health professional under clinical supervision;

2. Individual and group therapies and other behavioral health interventions necessary to stabilize the recipient; and

3. Discharge planning to link a recipient with community services and supports;

(b) Be provided by:

1. A child-caring facility licensed in accordance with 922 KAR 1:305;

2. A hospital licensed in accordance with 902 KAR 20:009 and 902 KAR 20:016 or 902 KAR 20:170; or

3. A community mental health center;

(c) Have a behavioral health professional with full-time clinical responsibility for the residential crisis stabilization program; and

(d) Have a behavioral health professional or a behavioral health professional under clinical supervision that shall have daily, face-to-face contact with the recipient. There shall be a behavioral health professional or a behavioral health professional under clinical supervision on site or on call at all times.

Section 7. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall apply for services provided in accordance with this administrative regulation.

(1) The Title V agency shall provide a service either directly or through an agreement with:

(a) DCBS as the Kentucky state agency responsible for the provision of child and adult protective services; or

(b) MH/MR as the Kentucky state agency responsible for oversight of mental health and substance abuse services in the state.

(2) A service provided directly by the Title V agency, DCBS, MH/MR, or a subcontractor shall meet the requirements established in this administrative regulation.

(3) A subcontractor or person employed by a subcontractor to provide services pursuant to this administrative regulation shall not:

(a) Have been convicted of a felony offense;

(b) Have been convicted of a misdemeanor offense involving an illegal substance within the five (5) years previous to becoming a subcontractor or person employed by a subcontractor to provide services;

(c) Have been convicted of or have entered a plea of guilty to a sex crime as defined in KRS 17.165;

(d) Have been convicted as or have entered a plea of guilty as a "violent offender" as defined in KRS 17.165; or

(e) Have had an incident of abuse or neglect of a child substantiated by the Cabinet for Families and Children after having been provided an opportunity to appeal the substantiation to an administrative or judicial body:

1. For which the individual waived the right to appeal the substantiation; or

2. For which an administrative body upheld the substantiated incident.

(4) A provider or subcontractor shall maintain a written medical record that shall:

(a) Be current, readily retrievable, organized, complete, and legible in accordance with sound medical record keeping practice;

(b) Include a written record that is dated and signed for each individual encounter that shall include:

1. The collaborative service plan dated and signed by members of the team specified in Section 5(7)(b) of this administrative regulation; and

2. Documentation of a service that shall include:

a. A written description of the service that specifies the collaborative service plan goal to which the service is directed and documented progress made by the recipient toward the goal;

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- b. The date of the service;
- c. The number of units of the service or starting and ending times;
- d. The place of the service;
- e. The name and qualifications of the person who provided the service; and
- f. The signature and date of signature of the person who provided the service and the person providing clinical supervision if required for the service;

(c) Be kept in a locked file and treated as confidential in accordance with KRS 194A.060, 434.840-860, 422.317 and 42 CFR 431 Subpart F; and

(d) Be furnished upon request and made available for inspection and copying by department personnel or other agencies in accordance with Section 8 of this administrative regulation.

(5) A provider or subcontractor of a targeted case management service shall maintain medical records that shall document provision of a case management service that shall include:

(a) A written targeted case management assessment in accordance with Section 6(1) of this administrative regulation;

(b) A contact list that includes the date, place, and content of contacts made with the recipient, parent, guardian, or caregiver, and other members of the team described in Section 5(7)(b) of this administrative regulation; and

(c) A monthly case management summary that includes:

1. Progress by the recipient in accessing services in the collaborative service plan;

2. The recipient's progress toward the goals specified in the collaborative service plan or an explanation of failure to progress;

3. The recipient's response to services provided pursuant to the collaborative service plan and a change in services to address failure to progress or problems in response;

4. Documentation of the implementation of a quality improvement program in accordance with subsection (7) of this section;

5. Documentation of permission by the parent or guardian to release and receive information about the recipient in accordance with applicable state and federal law;

6. Documentation of a referral for a service identified in a collaborative service plan in which the person providing a targeted case management service participated; and

7. A plan for delivery of targeted case management services for the following month.

(6) A subcontractor as part of an application process to provide services shall provide:

(a) Verification of a state police records check or a signed release to enable DCBS or MH/MR to request a state police records check and payment for the cost of obtaining the records check; and

(b) A listing of the services the subcontractor intends to provide that shall describe for each service:

1. Staff qualifications, supervision, and training; and

2. Oversight of staff and services by a behavioral health professional.

(7) DCBS and MH/MR shall establish and annually evaluate a quality improvement program approved by the department that monitors and evaluates, on a continuing basis, access, continuity of care and behavioral health care outcomes relating to a service provided directly or by a subcontractor in accordance with this administrative regulation.

(a) The monitoring and evaluation shall be based upon:

1. A recipient's demographic characteristics, risk factors, functional status, comorbidities and behavioral health status;

2. A recipient's access to a service;

3. Utilization and cost of a service;

4. A recipient's satisfaction with a service; and

5. Adverse incidents and complications.

(b) Behavioral health outcomes shall include:

1. Reduction of behavioral disability and restoration of an individual to the highest possible functioning level; and

2. Provision of a service in the least confining setting appropriate for the required treatment or care.

(c) A subcontractor of DCBS or MH/MR shall:

1. Measure and report an outcome of the provision of a service;

2. Have a program for the improvement of the quality of a service; and

3. Monitor the utilization of a service.

(8) A recipient shall be informed of the right to select and shall select a subcontractor to provide a service covered by this administrative regulation from a list of subcontractors approved by DCBS or MH/MR. A parent, custodial parent, person exercising custodial control or supervision as defined in KRS 600.020, or agency with legal responsibility for an individual by virtue of voluntary commitment or an emergency or temporary custody order, shall be allowed to act on behalf of the recipient in selecting a subcontractor for services.

(9) A provider or subcontractor shall maintain documentation of services provided and billed for a minimum of six (6) years or until an audit dispute or issue is resolved, which ever is longer.

Section 8. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall provide to the department or a representative of an agency or office identified in subsection (4) of this section, upon request:

(a) Medical records and other information maintained by the provider to document the service provided;

(b) Information regarding a payment claimed by the provider for furnishing a service; and

(c) Information documenting the cost of the service.

(2) The department shall have the right to inspect medical and other records on site or to require the provider or subcontractor to provide written or electronic documentation for review as determined to be appropriate by the department.

(3) The department shall have the right to interview recipients, parents, guardians, primary caregivers or current or previous provider or subcontractor staff with regard to a service provided in accordance with Section 6 of this administrative regulation.

(4) Access to a provider's or subcontractor's records relating to a service provided shall be made available upon request to:

(a) A representative of the United States Department of Health and Human Services;

(b) The United States Attorney General's Office;

(c) The state attorney general's office;

(d) The state auditor's office;

(e) The Office of the Inspector General;

(f) The department; or

(g) MH/MR and DCBS as contractors of services.

Section 9. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the service as specified in this section. The department shall not reimburse administrative and indirect overhead costs of the Departments for Public Health, MH/MR, or DCBS.

(1) Payment shall be based on actual expenditures incurred for providing a service by the Title V agency, MH/MR or DCBS.

(2) The Title V agency, DCBS and MH/MR shall maintain service and cost records to document that payments for services provided do not exceed cost.

(3) For a service that is provided through a subcontractor, the applicable state agency shall maintain records of a payment made to a subcontractor for a service provided to a recipient that shall include:

(a) The recipient's name;

(b) The recipient's Medicaid identification number;

(c) The date, service, and amount of payment for the service; and

(d) Information necessary for the accountable administration of the program.

(4) Except for a targeted case management service authorized in accordance with Section 5(9) of this administrative regulation, the department shall not reimburse another service covered by this administrative regulation for a recipient who is receiving a therapeutic group residential or a therapeutic foster care service.

(5) The payment rate for a continuing service that was originally authorized for a child prior to the effective date of this administrative regulation shall be a negotiated rate between the provider and the subcontractor and a negotiated rate for a subcontracted service shall not be effective unless approved by the department.

(6) The payment rate for a service that is authorized for a child determined eligible after the effective date of this administrative

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regulation shall be uniformly set by the provider to all subcontractors based upon ninety-eight (98) of the weighted median of all IMPACT Plus paid claims for the service for the period of calendar year 2001.

(7) A billable unit of service shall be:

(a) Fifteen (15) minutes for:

1. An individual therapy service;

2. A group therapy service; or

3. A collateral service;

(b) One (1) hour for:

1. A behavioral health evaluation;

2. A therapeutic child support service;

3. A parent-to-parent support service;

4. An after-school or summer program service;

5. A day treatment service;

6. A partial hospitalization service; or

7. An intensive outpatient behavioral health service;

(c) One (1) day for:

1. A therapeutic foster care service;

2. A therapeutic residential care service; or

3. A residential crisis stabilization service; and

(d) One (1) month for a targeted case management service.

(8) The following costs shall not be reimbursed:

(a) Room and board; and

(b) Educational, vocational or transportation services.

(9) Failure to comply with the requirements established in this administrative regulation in the provision of a covered service shall subject the provider or subcontractor to recoupment by the department.

Section 10. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal department decisions as to the application of this administrative regulation as it impacts reimbursement in accordance with 907 KAR 1:671.

Section 11. 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. ["Department" means the Department for Medicaid Services.

(2) "IMPACT Plus" means the program of behavioral health services provided through an agreement with the state Title V agency.

(3) "Licensed practitioner of the healing arts" means a practitioner of the healing arts who is:

(a) Licensed in accordance with KRS 311.271; or

(b) Exempt from licensure pursuant to KRS 335.010(4).

(4) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed or certified practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of a behavioral disability and restoration and maintenance of a recipient to his highest possible functional level.

(5) "Targeted case management services" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services pursuant to 42 USC 1396n.

(6) "Title V agency" means the Department for Public Health.

Section 2. Interagency Agreement. Services provided pursuant to Section 3 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Coverage. Services provided shall be those that meet the terms of the agreement between the department and the Title V agency, which are appropriate for the reduction of behavioral disability and restoration of a recipient to his highest possible functional level,

and which shall be within the following general areas:

(1) Targeted case management services provided to:

(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Community Based Services established in 905 KAR Chapter 1 to be defined as a child:

1.a. In the custody of the state;

b. Under the supervision of the state; or

c. At risk of being in the custody of the state; and

2.a. In an institution; or

b. At risk of institutionalization; or

(b) A Medicaid eligible child under age twenty one (21) who is:

1. In an institution; or

2. At risk of institutionalization.

(2) A service covered as a targeted case management service:

(a) May include:

1. Assessment of family strengths and needs;

2. Assistance in developing, coordinating, and accessing services in the individual service plan or family support plan;

3. Coordination of interagency team meetings to develop a family support plan;

4. Facilitation of the implementation of a child and family service plan;

5. Monitoring progress and performing advocacy to assure appropriate, timely, and productive treatment and support services; or

6. Participation in the development of other human service plans for the child; and

(b) Shall not include:

1. The actual provision of a treatment;

2. An outreach activity to a potential client;

3. An administrative activity associated with a Medicaid eligibility determination or application processing;

4. Institutional discharge planning;

5. A transportation service; or

6. A duplicate payment made to another public agency or private entity for the same purpose.

(3) Rehabilitative services provided to:

(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Community Based Services established in 905 KAR Chapter 1 to be defined as a child:

1.a. In the custody of the state;

b. Under the supervision of the state; or

c. At risk of being in the custody of the state; and

2.a. In an institution; or

b. At risk of institutionalization; or

(b) A Medicaid eligible child under age twenty one (21) who is:

1. In an institution; or

2. At risk of institutionalization.

(4) A service covered as a rehabilitative service shall be one (1) of the following:

(a) Individual services;

(b) Group services;

(c) Collateral services;

(d) After school or summer program services;

(e) Day treatment services;

(f) Partial hospitalization services;

(g) Intensive out-patient services;

(h) Therapeutic foster care services;

(i) Therapeutic group residential care services;

(j) Residential crisis stabilization services; or

(k) Wilderness camp.

Section 4. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to Section 3 of this administrative regulation.

(1) The Title V agency shall provide a service:

(a) Directly;

(b) Through agreement with the Kentucky Department for Community Based Services as the state agency responsible for the provision of child and adult protective services; or

(c) Through agreement with the Kentucky Department for Mental Health and Mental Retardation Services as the agency responsible for

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oversight of mental health and substance abuse services in the state.

(2) A service which is provided directly by the Title V agency or by the Departments for Community Based Services or Mental Health and Mental Retardation Services or a subcontractor shall meet the requirements established in the IMPACT Plus Manual for the service and shall include:

- (a) A plan of care;
- (b) Documentation of supervision of staff as appropriate; and
- (c) Documentation of services provided.

(3) A provider or subcontractor shall maintain records to document services provided:

- (a) For not less than five (5) years; or
- (b) Until any audit dispute or issue is resolved if beyond five (5) years.

Section 5. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall provide to the department or a representative of an agency or office listed in subsection (4) of this section, upon request:

- (a) Information maintained by the provider to document the service provided;
- (b) Information regarding a payment claimed by the provider for furnishing a service; or
- (c) Information documenting the cost of the service.

(2) Inspection shall be on site or through the submittal of written or electronic materials as determined to be appropriate by the department.

(3) The department may interview:

(a) Current or previous provider or subcontractor staff with regard to a service provided pursuant to Section 3 of this administrative regulation; or

(b) A recipient of a targeted case management or rehabilitative service with regard to a service received pursuant to Section 3 of this administrative regulation.

(4) Access to provider or subcontractor records relating to a service provided shall be required for:

- (a) A representative of the United States Department of Health and Human Services;
- (b) The United States Attorney General's Office;
- (c) The state Attorney General's Office;
- (d) The state Auditor's Office; or
- (e) The Office of the Inspector General.

Section 6. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the service as specified in this section. The administrative and indirect overhead costs to the Departments for Public Health, Mental Health and Mental Retardation Services or Community Based Services shall not be reimbursed by the department.

(1) A payment shall be based on actual expenditures incurred for the provision of the service by the Title V agency or the Departments for Mental Health and Mental Retardation Services or Community Based Services.

(2) For a service provided directly by the Title V agency or by the Departments for Community Based Services or Mental Health and Mental Retardation Services, the appropriate agency shall maintain service and cost records to document that payments do not exceed cost.

(3) For a service provided through a subcontractor, the applicable state agency shall maintain records showing a payment made to a subcontractor on an individual client per service basis.

(4) The payment rate for a subcontractor provided service shall be negotiated between the provider and the subcontractor.

(a) A negotiated rate for a subcontracted service shall not be effective unless approved by the department.

(b) To facilitate the negotiated rate approval process, the department's representative may participate directly in the negotiation process and review proposed subcontractor payment amounts prior to approval.

(5) Depending on the service provided, a billable unit of service shall be in increments of:

- (a) Fifteen (15) minutes;
- (b) One (1) hour;
- (c) One (1) day; or

(d) One (1) month.

Section 7. Incorporation by Reference. (1) "IMPACT Plus Manual", Department for Medicaid Services, September 1998, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: May 20, 2002

FILED WITH LRC: May 21, 2002 at 4 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Stuart Owen or Teresa Goodrich

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology and coverage provisions for Medicaid's IMPACT Plus Program.

(b) The necessity of this administrative regulation: Promulgation of this administrative regulation is necessary to establish the reimbursement methodology and coverage provisions for Medicaid's IMPACT Plus Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement methodology and coverage provisions for Medicaid's IMPACT Plus Program.

(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 by establishing the reimbursement methodology and coverage provisions for Medicaid's IMPACT Plus 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 amendment will clarify the eligibility criteria for the IMPACT Plus Program; establish criteria for being at risk of institutionalization; establish standards for covered services; clarify the requirements for covered services; clarify provider qualifications and conditions for participation; clarify medical record requirements; amend the reimbursement criteria; delete the IMPACT Plus Manual from being incorporated by reference; and make necessary corrections to comply with KRS Chapter 13A, and other technical policy amendments.

(b) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to provide uniform access to medically-necessary services to the targeted population. It also provides the Department for Medicaid Services the necessary tools for monitoring services and to assure delivery of quality services to the targeted population.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 205.520 because it provides for the administration of Title XIX of the Federal Social Security Act by the Department for Medicaid Services. The amendment provides governing rules for administering the IMPACT Plus Program. The amended regulation conforms to KRS 205.520 by establishing necessary rules for administering the IMPACT Plus Program, a program necessary to protect, develop, and maintain the health of the individual citizens of Kentucky and to qualify for federal funds and to cooperate with other state agencies for the proper administration of the cabinet's programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the authorizing statutes by establishing criteria for determining "at risk of institutionalization" which provides for uniform access to medically-necessary services for the targeted population. It also establishes the necessary policy to protect the health of the individual citizens of Kentucky (within the targeted population). Finally, this amendment provides for cooperation with other state agencies, DMH/MRS and DCBS, utilizing their expertise and resources for the effective administration of cabinet programs. Also the Department

for Mental Health/Mental Retardation (MH/MR), the Department for Community Based Services (DCBS), and approximately 300 subcontractors who currently provide direct services through the IMPACT Plus Program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment to 907 KAR 3:030 affects approximately 3000 individuals currently receiving IMPACT Plus services, the Department for Mental Health and Mental Retardation Services (DMHMRS), the Department for Community Based Services (DCBS), and approximately 300 subcontractors who currently provide direct services through the IMPACT Plus 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: Recipients of IMPACT Plus services must meet additional eligibility requirements which will help the cabinet to direct the limited resources to the children who most need them and also will serve to refocus the program to service children in their own homes, while limiting the entrance into residential and foster care. DMHMRS and DCBS, Medicaid providers of IMPACT Plus services, have additional tracking and reporting requirements, must develop and implement a quality improvement program and must develop an outcome measurement system. Subcontractors of IMPACT Plus services must meet expanded service provision and medical records requirements. They also must develop and implement quality improvement programs and develop systems for outcome measurement.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendments to this administrative regulation will save approximately \$100,000 during the first year.

(b) On a continuing basis: DMS estimates that savings in subsequent years may likely diminish given that providers whose initial rate was above the median rate may decrease services; whereas, providers who were initially below the median rate (and whose rates will thus be raised to the median level) would likely increase services.

(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 Title XXI and matching funds of general fund appropriations. Initially, DMS estimates that \$69,940 (69.94%) in federal funds and \$30,060 (30.06%) in state matching funds will be saved.

(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: DMS estimates that no increase in fees or 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 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
911 KAR 2:120E

This emergency administrative regulation is being promulgated to enable the Commission for Children with Special Health Care Needs to create a process in which the agency can review a child's records to determine whether an intensive level evaluation (ILE) is necessary. This action must be taken on an emergency basis in order to control the twenty (20) percent annual growth of the pro-

gram; thereby preventing a loss of federal and state funding. Failure to enact this administrative regulation on an emergency basis would result in a loss of federal and state funds because intensive level evaluation almost always result in a child being eligible for First Steps services. By creating a process in which the Commission for Children with Special Health Care Needs would review a child's record when a child is referred for an ILE, it would save funding since existing commission staff would perform this process and an ILE may not be necessary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor
MARCIA R. MORGAN, Secretary

CABINET FOR HEALTH SERVICES
Commission for Children with Special Health Care Needs
Health and Development Division
(Emergency Amendment)

911 KAR 2:120E. Kentucky Early Intervention Program evaluation and eligibility.

RELATES TO: 20 USC 1471-1485
STATUTORY AUTHORITY: KRS 194A.050, 200.650-676
EFFECTIVE: June 14, 2002

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer ~~all~~ funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes ~~sets forth~~ the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Evaluation. (1) A child referred to the First Steps Program shall be evaluated to determine eligibility.

(2)(a) A determination of eligibility pursuant to Section 2 of this administrative regulation, assessments in the area of delay, in accordance with 911 KAR 2:130, and the initial IFSP team meeting [Every child shall have an evaluation to determine eligibility:

(a) A primary evaluation] shall occur within forty-five (45) calendar days after a point of entry receives an initial [receipt of the] referral; or

(b) If a determination of eligibility, assessments and initial IFSP team meeting [primary evaluation] does not occur within forty-five (45) calendar days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(c) If [When] a family is referred for a determination of eligibility [evaluation by the initial service coordinator] and the family is under court order or a social services directive to enroll their child in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the determination of eligibility [evaluation].

(3) [(4)] Child records of evaluations transferred from out-of-state tertiary or developmental evaluation centers shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination if [when]:

(a) [1-] The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and

(b) [2-] The records contain the [all] developmental evaluation information established in subsection (10)(a) and (b) of this section [required by First Steps to determine eligibility].

(4) [(2)] The primary level evaluation is the first level in the First Steps evaluation system that shall be utilized to determine eligibility, developmental status and recommendations for program planning:

(a) If there is a previous [The] primary level evaluation available, it shall have been performed [is used when there are no existing evaluations available] within the following allowed time limits:

1. For children under twelve (12) months of age, evaluations shall have been performed within three (3) months prior to referral to First Steps;

2. For children twelve (12) months to three (3) years of age, evaluations shall ~~evaluation must~~ have been performed within six (6)

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months prior to referral to First Steps;

(b) Primary level evaluations shall provide evaluation in the [all] five (5) developmental areas identified in Section 2(1)(a)1 through 5 of this administrative regulation using norm-referenced standardized instruments;

(c) The primary level evaluation shall be provided by a multidisciplinary team consisting of a physician or nurse practitioner and a primary evaluator approved by the cabinet;

(d) A primary level [Primary evaluation] shall [be multidisciplinary and shall minimally] include:

1. A medical component completed by a physician or a nurse practitioner that includes:

- a. A history and physical examination;
- b. A hearing and vision screening; and
- c. A child's medical evaluation that shall be current in accordance with paragraph (a) of this subsection [according to the following:

(i) For children under twelve (12) months of age, the medical evaluation shall have been performed within three (3) months prior to referral to First Steps; and

(ii) For children twelve (12) months to three (3) years of age, the medical evaluation shall be performed within six (6) months prior to referral];

2. A developmental component completed by a CCSHCN-approved [a-qualified] primary level evaluator that utilizes norm-referenced standardized instruments, [measures and] the results of which shall:

a. Include the determination of eligibility or possible referral for a record review; and

b. Be discussed with the family prior to the initial IFSP team meeting and addressed at the initial IFSP meeting with the entire team present.

(5) Prior to the initial IFSP team meeting the initial service coordinator shall contact the family to make appropriate arrangements, including selection of a primary service coordinator and service providers, in accordance with 911 KAR 2:110.

(6) At the initial IFSP team meeting the IFSP team shall:

(a) Verify the child's eligibility;

(b) Review the evaluation information identified in subsection (4) of this section;

(c) Review the assessment reports in accordance with 911 KAR 2:130; and

(d) Determine the services the child shall receive. [interpreted to the family prior to the IFSP team meeting.

(3) Verification of a child's eligibility for services shall be based upon the review by parents and professionals at the initial IFSP meeting;]

(7)(a) [(4)] Reevaluations shall be provided if [when] a child's eligibility warrants review.

(b) Reevaluations shall not be used to:

1. Address concerns that are medical in nature; or

2. Provide periodic, ongoing follow-up services for posttesting or testing for transition. [or a new condition is suspected or becomes apparent;

(a) The need for reevaluation is determined by the IFSP team;

(b) Reevaluations shall be obtained at the level of evaluation determined to be needed by the IFSP team.]

(c) Based on the result of the reevaluation, the IFSP team shall:

1. Continue with the same level of services; [or]

2. Continue with modified services; [or]

3. Continue eligibility with a tracking and maintenance approach by the primary discipline and reevaluate in six (6) months; or

4. Transition [Graduate] the child from First Steps services because the child is developmentally age appropriate[; or

4. Continue eligibility with a tracking and maintenance approach and reevaluate in six (6) months].

(8) A review of the child's First Steps record shall be [(5)-An intensive evaluation is] the second level in the First Steps evaluation system that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation. [;]

(a) A primary evaluator or the IFSP team shall refer a child's record to the commission for a record review if [A child shall be referred for an intensive level evaluation when]:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to further define the child's

developmental status in terms of a child's strengths and areas of need; [or]

2. A child does not [doesn't] meet eligibility guidelines at the primary level, but a primary evaluator and [or] the family still have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed; or

3. The IFSP team requests an intensive level [team] evaluation for the purposes of a diagnosis or to make specific program planning and evaluation recommendations for the individual child.

(b)1. If a primary evaluator or an IFSP team refers a child's record for a record review the following shall be submitted by the service coordinator to the Louisville commission office at 982 Eastern Parkway, Louisville, Kentucky, 40217:

a. A cover letter from the service coordinator or evaluator justifying the referral for a record review;

b. Primary level evaluation information specified in subsection (10) of this section;

c. Assessment reports required in 911 KAR 2:130; and

d. Available IFSPs.

2. The service coordinator or evaluator requesting the record review shall attempt to procure and submit the following information:

a. Birth records, if neonatal or perinatal complications occurred;

b. General pediatric records from the primary pediatrician;

c. Medical records from hospitalizations; and

d. Records from medical subspecialty consultations, such as neurology, orthopedic, gastroenterology or ophthalmology.

(c)1. Upon receiving a referral, a team of commission professional staff shall conduct a record review.

2. After conducting the record review, staff shall:

a. Determine that further developmental testing, diagnostics or additional professional judgment are required in order to adequately ascertain the child's developmental needs, and the commission shall refer the child for an intensive level evaluation, the third level in the First Steps evaluation system;

b. Determine that the child meets or does not meet the eligibility criteria established in Section 2(1) of this administrative regulation; or

c. Provide the IFSP team with recommendations for service planning.

(d) Upon request to the commission, a team approved by the commission and consisting of the following members shall perform [A record review shall be done by an intensive team at the request of the IFSP team whenever:

1. There is a question of eligibility;

2. Concern for a child's condition; or

3. Effectiveness of a child's program plan.

(c) an intensive level evaluation [shall be provided by an approved team consisting of]:

1. A board certified developmental pediatrician; [or]

2. A pediatrician who has experience in the area of early childhood development; [and]

3. A pediatric psychiatrist; or

4. A pediatric neurologist; and

5. One (1) or more [qualified] developmental professionals identified in 911 KAR 2:150, Section 1.

(9) [(6)] Family rights shall [must] be respected and procedural safeguards followed in providing evaluation services:

(a) Written parental consent shall be obtained before conducting an evaluation or assessment by the evaluator or assessor respectively.

(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:

1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong.

2. If a child is determined [With the presence of a professional judgement of developmental delay that determines the child] to be eligible, First Steps shall provide, at the parent's request, services that do not require, by statute, proper physical or medical evaluations.

3. The initial service coordinator shall explain to the family that refusal due to religious beliefs may result in a denial of services which

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require a medical assessment on which to base treatment protocols.

(10) [(7)] A written report shall be completed upon completion of an evaluation [for every level of evaluation including record reviews].

(a) A record review shall include the components specified in this paragraph that can be addressed without having the child present for the evaluation. A primary level evaluation and an intensive level evaluation shall include the following components [The minimum components are]:

1. Date of evaluation;
2. Names of evaluators and those present during the evaluation, professional degree, and discipline;
3. The setting of the evaluation;
4. [2.] Name and telephone number of contact person;
5. [3.] Identifying information that includes the:
 - a. Child's CBIS identification number;
 - b. Child's name and address;
 - c. Child's chronological age (and gestational age, if prematurely born) at the time of the evaluation;

- d. Health of the child during the evaluation;
- e. [Age;
- b.] Date of birth;
- f. [c.] Date of evaluation;
- d.] Evaluator's affiliation, and professional degree;]
- g. [e.] Referral source; and
- h. [f.] Reason for referral or presenting problems.

6. [4.] Tests administered or evaluation procedures utilized and purpose of instrument. No one (1) method of evaluation shall be used, but a combination of tests and methods shall be used;

7. [5.] Test results and interpretation of strengths [strength] and needs of the child;

8. [6.] Test results reported in standard deviation or developmental quotient if [when such] instrumentation is required pursuant to subsection (4)(d)2 of this section;

9. Factors that may have influenced test conclusions;

10. [7.] Eligibility;

11. [8.] Developmental status or diagnosis;

12. [9.] Program plan recommendations, including suggestions regarding natural environments, that address the child's holistic needs based on the evaluation;

13. Parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances; and

14. [10.] A narrative description of the [all] five (5) areas of a child's developmental status. [;]

(b) The [full] report established in paragraph (a) of this subsection shall be written in clear, concise language that is easily understood by the family.

(c)1. The reports and notification of need for further evaluation shall be made available to the current IFSP team within fourteen (14) calendar [ten (10) working] days from the date the evaluation referral was received [was completed].

2. If it is not possible to provide the report and notification required in this paragraph by the established time frame due to illness of the child or a request by the parent, the delay circumstances shall be documented.

[(8) Child records of timely evaluations transferred from out of state tertiary centers or developmental evaluation centers may be utilized for eligibility determination;

(a) These records shall be reviewed for all required evaluation record components by the POE services coordinator;

(b) If information is unattainable, the child shall be evaluated for eligibility.]

Section 2. Eligibility. (1) A child shall be [Children who are] eligible for First Steps services if he is aged [include those who are ages] birth through two (2) years; [;] and:

(a) Through the evaluation process is [By using appropriate diagnostic instruments and procedures, or professional judgment, are] determined to have fallen significantly behind developmental norms in the following skill areas:

1. Cognitive development;
2. Communication through speech and language development;
3. Physical development including vision and hearing;
4. Social and emotional development; and

5. Adaptive skills development; and

(b) Is [Are] significantly behind in developmental norms as evidenced by the following criteria:

1. Two (2) standard deviations below the mean in one (1) skill area (developmental quotient equivalent seventy (70) percent or below); or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas; or

(c) Meets the criteria established in KRS 200.654(10)(b) who has one (1) of the following diagnosed conditions:

Aase-Smith Syndrome
Aase Syndrome
Acrocallosal Syndrome
Acrodysostosis
Acro-Fronto-Facio-Nasal Dysostosis
Adrenoleukodystrophy
Agensis of the Corpus Callosum
Agyria
Aicardi Syndrome
Alexander's Disease
Alper's Syndrome
Amelia
Angelman Syndrome
Aniridia
Anophthalmia/Microphthalmia
Antley-Bixler Syndrome
Apert Syndrome
Arachnoid cyst with Neuro Developmental Delay
Arhinencephaly
Arthrogyrosis
Ataxia
Atelosteogenesis
Autism
Baller-Gerold Syndrome
Bannayan-Riley-Ruvalcaba Syndrome
Bardet-Biedl Syndrome
Bartsocas-Papas Syndrome
Beals Syndrome (Congenital Contractural Arachnodactyly)
Biotinidase Deficiency
Bixler Syndrome
Blackfan-Diamond Syndrome
Bobbie Head Doll Syndrome
Borjeson-Forsman-Lehmann Syndrome
Brancio-Oto-Renal (BOR) Syndrome
Campomelic Dysplasia
Canavan Disease
Carbohydrate Deficient Glycoprotein Syndrome
Cardio-Facio-Cutaneous Syndrome
Carpenter Syndrome
Cataracts - Congenital
Caudal Dysplasia
Cerebro-Costo-Mandibular Syndrome
Cerebellar Aplasia/Hypoplasia/Degeneration
Cerebral Atrophy
Cerebral Palsy
Cerebro-oculo-facial-skeletal Syndrome
CHARGE Association
Chediak Higashi Syndrome
Chondrodysplasia Punctata
Christian Syndrome
Chromosome Abnormality
a. Unbalanced numerical (autosomal)
b. Numerical trisomy (chromosomes 1-22)
c. Sex chromosomes XXX; XXXX; XXXXX; XXXY; XXXXY
CNS Aneurysm with Neuro Developmental Delay
CNS Tumor with Neuro Developmental Delay
Cockayne Syndrome
Coffin Lowry Syndrome
Coffin Siris syndrome
Cohen Syndrome
Cone Dystrophy

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Congenital Cytomegalovirus
Congenital Herpes
Congenital Rubella
Congenital Syphilis
Congenital Toxoplasmosis
Cortical Blindness
Costello Syndrome
Cri Du Chat Syndrome
Cryptophthalmos
Cutis Laxa
Cytochrome-c Oxidase Deficiency
Dandy Walker Syndrome
DeBary Syndrome
DeBuquois Syndrome
Dejerine-Sottas Syndrome
DeLange Syndrome
DeSanctis-Cacchione Syndrome
Diastraphic Dysplasia
DiGeorge Syndrome (22q11.2 deletion)
Distal Arthrogryosis
Donohue Syndrome
Down Syndrome
Dubowitz Syndrome
Dyggve Melchor-Clausen Syndrome
Dyssegmental Dysplasia
Dystonia
EEC (Ectrodactyly-ectodermal Dysplasia-clefting) Syndrome
Encephalocele
Encephalo-Cranio-Cutaneous Syndrome
Encephalomalacia
Exencephaly
Facio-Auriculo-Radial dysplasia
Facio-Cardio-Renal (Eastman-Bixler) Syndrome
Familial Dysautonomia (Riley-Day Syndrome)
Fanconi Anemia
Farber Syndrome
Fatty Acid Oxidation Disorder (SCAD, ICAD, LCHAD)
Femoral Hypoplasia
Fetal Alcohol Syndrome/Effects
Fetal Dyskinesia
Fetal Hydantoin Syndrome
Fetal Valproate Syndrome
Fetal Varicella Syndrome
FG Syndrome
Fibrochondrogenesis
Floating Harbor Syndrome
Fragile X Syndrome
Fretman-Sheldon (Whistling Facies) Syndrome
Fryns Syndrome
Fucosidosis
Glaucoma - Congenital
Glutaric Aciduria Type I and II
Glycogen Storage Disease
Goldberg-Shprintzen Syndrome
Grebe Syndrome
Hallermann-Streiff Syndrome
Hays-Wells Syndrome
Head Trauma with Neurological Sequelae/Developmental Delay
Hearing Loss (Bilateral > 40 dB)
Hemimegalencephaly
Hemiplegia/Hemiparesis
Hemorrhage-Intraventricular Grade III, IV
Hereditary Sensory & Autonomic Neuropathy
Hereditary Sensory Motor Neuropathy (Charcot Marie Tooth Disease)
Herrmann Syndrome
Heterotopias
Holoprosencephaly (Aprosencephaly)
Holt-Oram Syndrome
Homocystinuria

Hunter Syndrome (MPSII)
Huntington Disease
Hurler Syndrome (MPSI)
Hyalanosis
Hydranencephaly
Hydrocephalus
Hyperipecolic Acidema
Hypomelanosis of ITO
Hypophosphotasia-Infantile
Hypoxic Ischemic Encephalopathy
I-Cell (Mucopolidosis II) Disease
Incontinentia Pigmenti
Infantile Spasms
Iniencephaly
Isovaleric Acidemia
Jarcho-Levin Syndrome
Jervell Syndrome
Johanson-Blizzard Syndrome
Joubert Syndrome
Kabuki Syndrome
KBG Syndrome
Kenny-Caffey Syndrome
Klee Blattschadel
Klippel-Feil Sequence
Landau-Kleffner Syndrome
Lange-Nielsen Syndrome
Langer Giedion Syndrome
Larsen Syndrome
Laurin-Sandrow Syndrome
Leber's Amaurosis
Leigh Disease
Lennox-Gastaut Syndrome
Lenz Majewski Syndrome
Lenz Microphthalmia Syndrome
Levy-Hollister (LADD) Syndrome
Lesch-Nyhan Syndrome
Leukodystrophy
Lissencephaly
Lowe Syndrome
Lowry-Maclean Syndrome
Maffucci Syndrome
Mannosidosis
Maple Syrup Urine Disease
Marden Walker Syndrome
Marshall Syndrome
Marshall-Smith Syndrome
Maroteaux-Lamy Syndrome (MPS VI)
Maternal PKU Effects
Megalencephaly
MELAS
Meningocele (cervical)
MERRF
Metachromatic Leukodystrophy
Metatropic Dysplasia
Methylmalonic Acidemia
Microcephaly
Microtia-Bilateral
Midas Syndrome
Miller (Postaxial Acrofacial-Dysostosis) Syndrome
Miller-Dieker Syndrome
Mitochondrial Disorder
Moebius Syndrome
Morquio Syndrome (MPS IV)
Moya-Moya Disease
Mucopolidosis II, III
Multiple Congenital Anomalies (Major Organ Birth Defects)
Multiple Pterygium Syndrome
Muscular Dystrophy
Myasthenia Gravis - Congenital
Myelocystocele

<u>Myopathy - Congenital</u>
<u>Myotonic Dystrophy</u>
<u>Nager (Acrofacial Dysostosis) Syndrome</u>
<u>Nance Horan Syndrome</u>
<u>NARP</u>
<u>Neonatal Meningitis/Encephalitis</u>
<u>Neuronal Ceroid Lipofuscinoses</u>
<u>Neuronal Migration Disorder</u>
<u>Nonketotic Hyperglycinemia</u>
<u>Noonan Syndrome</u>
<u>Ocular Albinism</u>
<u>Oculocerebrocutaneous Syndrome</u>
<u>Oculo-Cutaneous Albinism</u>
<u>Optic Atrophy</u>
<u>Optic Nerve Hypoplasia</u>
<u>Oral-Facial-Digital Syndrome Type I-VII</u>
<u>Osteogenesis Imperfecta Type III-IV</u>
<u>Osteopetrosis (Autosomal Recessive)</u>
<u>Oto-Palato-Digital Syndrome Type I-II</u>
<u>Pachygyria</u>
<u>Pallister Mosaic Syndrome</u>
<u>Pallister-Hall Syndrome</u>
<u>Pelizaeus-Merzbacher Disease</u>
<u>Pendred's Syndrome</u>
<u>Periventricular Leukomalacia</u>
<u>Pervasive Developmental Disorder</u>
<u>Peters Anomaly</u>
<u>Phocomelia</u>
<u>Pierre Robin Sequence</u>
<u>Poland Sequence</u>
<u>Polymicrogyria</u>
<u>Popliteal Pterygium Syndrome</u>
<u>Porencephaly</u>
<u>Prader-Willi Syndrome</u>
<u>Progeria</u>
<u>Propionic Acidemia</u>
<u>Proteus Syndrome</u>
<u>Pyruvate Carboxylase Deficiency</u>
<u>Pyruvate Dehydrogenase Deficiency</u>
<u>Radial Aplasia/Hypoplasia</u>
<u>Refsum Disease</u>
<u>Retinoblastoma</u>
<u>Retinoic Acid Embryopathy</u>
<u>Retinopathy of Prematurity Stages III, IV</u>
<u>Rett Syndrome</u>
<u>Rickets</u>
<u>Rieger Syndrome</u>
<u>Roberts SC Phocomelia</u>
<u>Robinow Syndrome</u>
<u>Rubinstein-Taybi Syndrome</u>
<u>Sanfilippo Syndrome (MPS III)</u>
<u>Schinz-Giedion Syndrome</u>
<u>Schimmelpenning Syndrome (Epidermal Nevus Syndrome)</u>
<u>Schizencephaly</u>
<u>Schwartz-Jampel Syndrome</u>
<u>Seckel Syndrome</u>
<u>Septo-Optic Dysplasia</u>
<u>Shaken Baby Syndrome</u>
<u>Short Syndrome</u>
<u>Sialidosis</u>
<u>Simpson-Golabi-Behmel Syndrome</u>
<u>Sly Syndrome (MPS VII)</u>
<u>Smith-Fineman-Myers Syndrome</u>
<u>Smith-Limitz-Opitz Syndrome</u>
<u>Smith-Magenis Syndrome</u>
<u>Sotos Syndrome</u>
<u>Spina Bifida (Meningomyelocele)</u>
<u>Spinal Muscular Atrophy</u>
<u>Spondyloepiphyseal Dysplasia Congenita</u>
<u>Spondylometaphyseal Dysplasia</u>

<u>Stroke</u>
<u>Sturge-Weber Syndrome</u>
<u>TAR (Thrombocytopenia-Absent Radii Syndrome)</u>
<u>Thanatophoric Dysplasia</u>
<u>Tibial Aplasia (Hypoplasia)</u>
<u>Toriello-Carey Syndrome</u>
<u>Townes-Brocks Syndrome</u>
<u>Treacher-Collins Syndrome</u>
<u>Trisomy 13</u>
<u>Trisomy 18</u>
<u>Tuberous Sclerosis</u>
<u>Urea Cycle Defect</u>
<u>Velocardiofacial Syndrome (22q11.2 deletion)</u>
<u>Wildervanck Syndrome</u>
<u>Walker-Warburg Syndrome</u>
<u>Weaver Syndrome</u>
<u>Wiedemann-Rautenstrauch Syndrome</u>
<u>Williams Syndrome</u>
<u>Winchester Syndrome</u>
<u>Wolf Hirschhorn Syndrome</u>
<u>Yunis-Varon Syndrome</u>
<u>Zellweger Syndrome</u>

(2) If a child referred to the First Steps Program was born at less than thirty-seven (37) weeks gestational age, the following shall be considered:

[3. Children may be determined to be developmentally delayed by professional, clinical judgement, in the event standard deviation scores are inconclusive and evaluation reveals the child has significant atypical development or quality or pattern of development, or further diagnostic evaluation is needed to address concerns related to the five (5) areas of development. Professional judgement to determine a child to be developmentally delayed shall be obtained from an approved evaluator; or

(2) Those children who are diagnosed with physical or mental conditions which have a high probability of resulting in developmental delay and the diagnosis has been specified by KRS 200.645(10) as an established risk condition. The developmental delay shall be within one (1) of the following categories:

- (a) Chromosome abnormalities associated with developmental delay;
- (b) Recognizable syndromes associated with developmental delay;
- (c) Abnormality in central nervous system;
- (d) Neurological or neuromuscular disorders associated with developmental delay;
- (e) Symptomatic intrauterine infection or neonatal central nervous system infection;
- (f) Sensory impairments that result in significant visual or hearing loss, or a combination of both, interfering with the ability to respond effectively to environmental stimuli;
- (g) Metabolic disease having a high likelihood of being associated with developmental delay, even with treatment;
- (h) Maternal teratogen exposure at a level known to have a high risk for developmental delay;
- (i) Behavioral or emotional disorders associated with extreme excesses or deficits which inhibit function;
- (j) Central nervous system malignancy or trauma resulting in developmental delay.

(3) Eligibility for a premature child shall consider;

(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth;

(b) Correction for prematurity is not appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.

(c) Documentation of prematurity shall include a physician's [physician,] or nurse practitioner's written [practitioner,] report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

Section 3. The provisions of this administrative regulation shall be

effective with services provided on or after June 15, 2002.

JAMES GILDERSLEVE, Chair
ERIC FRIEDLANDER, Executive Director
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: June 13, 2002
FILED WITH LRC: June 14, 2002 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Trish Howard (502-595-4459 ext. 267) or Eric Friedlander (502-595-4459 ext. 271)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 200.660 requires the cabinet to promulgate regulations implementing the provisions for this program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the eligibility criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By clearly defining the eligibility criteria for this program, this administrative regulation assists the statutes in implementing the First Steps 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 amendment will provide conformity with KRS Chapter 13A by including all eligibility criteria for the program and will improve quality assurance of the services provided through this program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to prevent the potential loss of state and federal funding by providing an opportunity to better determine the need for intensive level evaluations. This amendment also brings this administrative regulation into compliance with KRS Chapter 13A by including all eligibility criteria in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.660 requires promulgation of an administrative regulation that implements the provisions of this program. This amendment is adding eligibility criteria that were previously not included.

(d) How the amendment will assist in the effective administration of the statutes: By including all eligibility criteria, parents and providers will better understand the means in which a child is determined eligible.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 3000 children who are referred for this program annually and approximately 640 providers participating. Potentially all of these individuals and agencies may be affected.

(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 changes included in this amendment will provide clearer direction as to how a child is determined eligible for First Steps. In addition, by providing for a process in which the Commission for Children with Special Health Care Needs can review a child's record if it is referred for an intensive level evaluation, it is anticipated to save funds. It may also shorten the amount of time in which an eligible child starts receiving services.

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

(a) Initially: Sufficient data is not available to predict an exact savings to this program. The change in process regarding eligibility and evaluation will strengthen the overall process and increase quality assurance. The fiscal impact could be substantial given the fact that analysis of current data confirms that approximately all patients referred for an intensive evaluation enter the program. Dur-

ing FY01 expenditures related to intensive evaluations totaled \$816,000. Given the amount expended for intensive evaluations and a probable reduction in the number of children who need to have intensive level evaluations supports findings for a positive fiscal impact to the program.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Part C and Medicaid funds and state 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 are no fee or funding increases associated with 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 directly or indirectly establish 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
911 KAR 2:200E**

This emergency administrative regulation is being promulgated to implement a decrease in reimbursement rates for some of the assessment and therapeutic intervention services as a result of a time/cost study conducted by Solutions, Inc. This action must be taken on an emergency basis in order to control the twenty (20) percent annual growth of the program, thereby preventing a loss of federal and state funds. Failure to enact this administrative regulation on an emergency basis would result in an imminent threat to the public health, safety or welfare of the citizens of Kentucky because the proposed biennial budget does not allow for the continuing growth of this program at its annual rate. Failure to enact this amendment would mean that a reduction in services would need to occur in order to stay within the proposed biennial budget. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor
MARCIA R. MORGAN, Secretary

**CABINET FOR HEALTH SERVICES
Commission for Children with Special Health Care Needs
Health and Development Division
(Emergency Amendment)**

911 KAR 2:200E. Coverage and payment for Kentucky Early Intervention Program services.

RELATES TO: 20 USC 1471-1485
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 200.650-676

EFFECTIVE: June 14, 2002

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made [by the First Steps Program] on behalf of eligible recipients.

Section 1. Definitions. (1) "Cabinet" is defined in KRS 200.654(2). (2) "CCSHCN" means the Commission for Children with Special

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Health Care Needs.

(3) "Collateral service" means:

(a) Face-to-face consultation and planning with IFSP team members while attending an IFSP team meeting; or

(b) Face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs.

(4) [means the Cabinet for Health Services.

(2) "Commercial transportation carrier" means a commercial carrier, including a taxi cab, that is licensed to transport a member of the general public.

(5) [(3)] "Direct contact" means an activity or contact that is:

(a) Face to face [or by telephone,] with a [the] child, or on behalf of a [the] child, with a [the] parent, family or person in custodial control of a child, a professional or other service provider, or other significant person; and

(b) Not the direct supervision of a paraprofessional by a professional.

(6) [(4)] "First Steps" means Kentucky's early intervention system [as] established by KRS 200.650 through 200.676.

(7) [(5)] "Noncommercial group carrier" means a vendor who provides bus or bus-type transportation to an identifiable segment of the population eligible for service from the carrier.

(8) [(6)] "Period of eligibility" means from the date the child was determined eligible to:

(a) The date of the child's third birthday; or

(b) [prior to the child's third birthday, to] The date the child is determined to meet developmental milestones and therefore, is no longer eligible, if prior to his third birthday [ineligible].

(9) [(7)] "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional transportation of eligible children.

(10) [(8)] "Provider" means an agency, person, or other entity that meets the requirements for approval as established in 911 KAR 2:100 through 911 KAR 2:180 and who signs an agreement with the Commission for Children with Special Health Care Needs (CCSHCN).

(11) [(9)] "Therapeutic intervention" means:

(a) Face-to-face [Treatment of the child or] intervention with the child and, if possible, with caregivers, within [in] the context of the [caregivers and] environment; and

(b) Not consultation and planning.

(12) [(10)] "Usual and customary charge" means the uniform amount [that] [which] the individual provider charges in the majority of the cases for a specific service.

Section 2. Participation Requirements. (1) An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(a) Submit to an annual review by the CCSHCN, or its agent, for compliance with 911 KAR 2:100 through 911 KAR 2:180 and this administrative regulation;

(b) Meet the qualifications for a professional or paraprofessional established in 911 KAR 2:150, or employ or contract with a professional or paraprofessional [staff] who meets the qualifications established in 911 KAR 2:150;

(c) Ensure that a professional or paraprofessional employed by the provider who [:

1. That each professional or staff who is employed by the provider and] provides a service in the First Steps Program shall attend a minimum of a one (1) day, not to exceed an eight (8) hour period, training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services[; and

2. That each professional or staff who is employed by the provider and presently providing a First Steps service shall have evidence of equivalent training];

(d) Agree to provide First Steps services according to an individualized family service plan as required in 911 KAR 2:130;

(e) Agree to maintain and to submit as requested by the CCSHCN [and to maintain all] required information, records, and reports to insure compliance with this administrative regulation;

(f) Establish a contractual arrangement with the Cabinet for Health Services for the provision of First Steps services; and

(g) Agree to provide upon request information necessary for reim-

bursement for services by the Cabinet for Health Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

(2) The CCSHCN shall grant provider approval for participation to a provider who meets the criteria established in subsection (1) of this section.

Section 3. Reimbursement. The CCSHCN shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the [preestablished] fixed upper limit established in this section for the service being provided [taking into consideration information available to the CCSHCN with regard to cost and the CCSHCN's estimate as to the amount necessary to secure the service].

(1) A charge submitted to the CCSHCN shall be the provider's usual and customary charge for the same service.

(2) The fixed [preestablished] upper limit [fee] for services shall be as follows:

(a) Primary service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with a parent, family or person in custodial control of a child, a professional or other service provider, or other significant person. [:]

1. In the office, the fee shall be sixty-one (61) [sixty-five (65)] dollars per hour of [direct contact] service.

2. In the home or community site, the fee shall be eighty-three (83) [eighty-eight (88)] dollars per hour of [direct contact] service.

(b) Initial service coordination. Initial service coordination shall be provided by face-to-face contact, in accordance with 911 KAR 2:110, Section 1(6)(d) and (7), or by telephone on behalf of a child, with a parent, family or person in custodial control of a child, a professional or other service provider, or other significant person. [:]

1. In the office, the fee shall be sixty-eight (68) dollars per hour of [direct contact] service.

2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of [direct contact] service.

(c) Primary level evaluation. The developmental component of the primary level evaluation shall be provided by face-to-face contact with the child and parent or person with custodial control of the child. [:]

1. In the office or center based site, the fee shall be \$225 [250] per service event.

2. In the home or community site, the fee shall be \$225 [250] per service event.

(d) Intensive clinic evaluation. The intensive level evaluation shall be provided by face-to-face contact with the child and parent or person with custodial control of the child. [:]

1. In the office or center-based site the fee shall be \$1,100 per service event.

2. In the community site the fee shall be \$1,100 [4,000] per service event.

(e) Service assessment:

1. For an audiologist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

2. For a family therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

3. For a licensed psychologist or certified psychologist with autonomous functioning:

a. In the office or center based site, the fee shall be \$186 [207] per hour of direct contact service.

b. In the home or community site, the fee shall be \$241 [268] per hour of direct contact service.

4. For a developmental interventionist:

a. In the office or center based site, the fee shall be seventy-eight (78) [eighty-three (83)] dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-seven (97) dollars [97] per hour of direct contact service.

5. For a registered nurse:

a. In the office or center based site, the fee shall be eighty-six (86)

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dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

6. For a nutritionist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

7. For a dietitian:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

8. For an occupational therapist:

a. In the office or center based site, the fee shall be eight-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

9. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be seventy-eight (78) ~~eighty-three (83)~~ dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-seven (97) dollars ~~[\$408]~~ per hour of direct contact service.

10. For a physical therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

11. For a speech therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

12. For a social worker:

a. In the office or center based site, the fee shall be seventy-eight (78) ~~eighty-three (83)~~ per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-seven (97) dollars ~~[\$408]~~ per hour of direct contact service.

13. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee shall be seventy-eight (78) ~~eighty-three (83)~~ dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-seven (97) dollars ~~[\$408]~~ per hour of direct contact service.

14. For a teacher of the visually impaired:

a. In the office or center based site, the fee shall be seventy-eight (78) ~~eighty-three (83)~~ dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-seven (97) dollars ~~[\$408]~~ per hour of direct contact service.

15. For an assistive technology specialist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

(f) Therapeutic intervention and collateral services:

1. For an audiologist:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ dollars per hour of ~~direct contact~~ service.

2. For a family therapist:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ per hour of ~~direct contact~~ service.

3. For a licensed psychologist or certified psychologist with autonomous functioning:

a. In the office or center based site, the fee shall be \$139 ~~[155]~~ per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be \$203 ~~[226]~~ per hour of ~~direct contact~~ service.

4. For a certified psychological associate:

a. In the office or center based site, the fee shall be \$104 ~~[146]~~ per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be \$153 ~~[170]~~ per

hour of ~~direct contact~~ service.

5. For a developmental interventionist:

a. In the office or center based site, the fee shall be sixty-one (61) ~~sixty-eight (68)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-one (81) ~~ninety-one (91)~~ dollars per hour of ~~direct contact~~ service.

6. For a developmental associate:

a. In the office or center based site, the fee shall be forty-five (45) ~~fifty-one (51)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be sixty-eight (68) dollars per hour of ~~direct contact~~ service.

7. For a developmental assistant, in the office or center based site, the fee shall be ten (10) dollars per hour of direct contact service.

8. For a registered nurse:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ dollars per hour of ~~direct contact~~ service.

9. For a licensed practical nurse:

a. In the office or center based site, the fee shall be twenty-four (24) dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be thirty-two (32) dollars per hour of ~~direct contact~~ service.

10. For a nutritionist:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ dollars per hour of ~~direct contact~~ service.

11. For a dietitian:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ dollars per hour of ~~direct contact~~ service.

12. For an occupational therapist:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ dollars per hour of ~~direct contact~~ service.

13. For an occupational therapist assistant:

a. In the office or center based site, the fee shall be forty-six (46) ~~fifty-two (52)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of ~~direct contact~~ service.

14. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be sixty-one (61) ~~sixty-eight (68)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-one (81) ~~ninety-one (91)~~ dollars per hour of ~~direct contact~~ service.

15. For a physical therapist:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ dollars per hour of ~~direct contact~~ service.

16. For a physical therapist assistant:

a. In the office or center based site, the fee shall be forty-six (46) ~~fifty-two (52)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of ~~direct contact~~ service.

17. For a speech therapist:

a. In the office or center based site, the fee shall be sixty-three (63) ~~seventy (70)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-nine (89) ~~ninety-four (94)~~ dollars per hour of ~~direct contact~~ service.

18. For a speech therapist assistant:

a. In the office or center based site, the fee shall be forty-six (46) ~~fifty-two (52)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

19. For a social worker:

a. In the office or center based site, the fee shall be sixty-one (61) ~~sixty-eight (68)~~ dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be eighty-one (81) ~~ninety-one (91)~~ dollars per hour of service.

20. For a teacher of the deaf and hard of hearing:

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a. In the office or center based site, the fee shall be ~~sixty-one (61)~~ sixty-eight (68) dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be ~~eighty-one (81)~~ ninety-one (91) dollars per hour of ~~direct contact~~ service.

21. For a teacher of the visually impaired:

a. In the office or center based site, the fee shall be ~~sixty-one (61)~~ sixty-eight (68) dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be ~~eighty-one (81)~~ ninety-one (91) dollars per hour of ~~direct contact~~ service.

22. For a physician providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of ~~direct contact~~ service. A physician shall not receive reimbursement for therapeutic intervention.

23. For an assistive technology specialist:

a. In the office or center based site, the fee shall be ~~sixty-one (61)~~ sixty-eight (68) dollars per hour of ~~direct contact~~ service.

b. In the home or community site, the fee shall be ~~eighty-one (81)~~ ninety-one (91) dollars per hour of ~~direct contact~~ service.

(g) Respite shall be seven (7) dollars and sixty (60) cents per hour.

(h) Integrated disciplines center-based services shall be fifty-six (56) dollars per hour of direct contact service.

(3) Except as specified in subsection (4) of this section, a payment for professional or staff services listed in subsection (2) of this section shall be based on a unit of service in fifteen (15) minutes increments.

(4) A payment for a primary or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service.

(5) A payment for an assistive technology device shall be based on the actual invoiced cost, including the cost of shipping and handling, for the authorized equipment included in the individualized family service plan.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier:

1. An amount derived by multiplying one (1) dollar by the actual number of loaded miles; or

2. The metered amount plus an administration charge not to exceed twelve (12) percent of metered amount.

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported;

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a single professional or paraprofessional group intervention service, with a minimum of one (1) professional or paraprofessional who can practice without direct supervision shall be ~~thirty-two (32)~~ thirty-six (36) dollars per child hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional.

(8) A payment for a multiprofessional or paraprofessional group intervention service, with a minimum of two (2) professionals or paraprofessionals who can practice without direct supervision, shall be ~~forty-one (41)~~ forty-six (46) dollars per child hour of direct contact service for each eligible child in the group with a limit of three (3) eligible children per professional or paraprofessional.

Section 4. Limitations. (1) For primary service coordination, payment shall be limited to no more than fifteen (15) hours ~~(or sixty (60) units)~~ per child per six (6) month period unless preauthorized by the CCSHCN. If submitting a prior authorization request to the CCSHCN, the request shall be sent to CCSHCN 982 Eastern Parkway, Louisville, Kentucky 40217, and shall include:

(a) The number of additional fifteen (15) minute units requested;

(b) A copy of the current IFSP;

(c) A detailed description of how and when the additional units are to be used; and

(d) A plan for how primary service coordination will be provided in an effective and efficient manner that will prevent the future need for additional units beyond the limit of sixty (60) units of service per six (6) month period.

(2) For initial service coordination, payment shall be limited to no more than twenty-five (25) hours per child per period of eligibility unless preauthorized by the CCSHCN.

(3) For service assessment:

(a) Payment shall be limited to no more than two and one-half (2 1/2) hours per child per discipline per assessment unless preauthorized by the CCSHCN.

(b) Payment shall be limited to four (4) assessments per discipline per child from birth to the age of three (3) unless preauthorized by the CCSHCN.

(c) A service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of that discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.

(4) For therapeutic intervention:

(a) For office and center:

1. Unless preauthorized by the CCSHCN, payment shall be limited to no more than one (1) combined hour of service per week [day] per child per discipline by either a:

a. Professional meeting the qualifications in 911 KAR 2:150; or

b. Paraprofessional meeting the qualifications in 911 KAR 2:150 [for each professional or discipline and paraprofessional meeting the qualifications in 911 KAR 2:150 unless preauthorized by the CCSHCN].

2. Payment shall be limited to no more than one (1) office visit per child, per day, per discipline unless preauthorized by the CCSHCN except that billing for a collateral service while participating in an IFSP meeting in the same day shall be allowed.

(b) For home and community sites:

1. Unless preauthorized by the CCSHCN, payment shall be limited to no more than one (1) combined hour of service per week [day] per child per discipline by either a:

a. Professional meeting the qualifications in 911 KAR 2:150; or

b. Paraprofessional meeting the qualifications in 911 KAR 2:150 [for each professional or discipline and paraprofessional unless preauthorized by the CCSHCN].

2. Payment shall be limited to no more than three (3) disciplines per child per day unless preauthorized by the CCSHCN except that billing for collateral while participating in an IFSP meeting in the same day shall be allowed.

(c) For group:

1. In a group setting the service time for each professional or discipline and paraprofessional may extend to the time period of the group, not to exceed two and one-half (2 1/2) hours per day, five (5) hours per week, unless preauthorized by the CCSHCN.

2. The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) children per professional [or discipline] and paraprofessional per group, unless preauthorized by the CCSHCN.

(5) For respite, payment shall:

(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

Section 5. Sliding Fee. (1) Families are required to participate in the payment of services based on a sliding fee scale, except that no charge be made for the following functions:

(a) Child find;

(b) Evaluation and assessment;

(c) Service coordination; and

(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(2) Payment of fees shall be for the purpose of:

(a) Maximizing all available sources of funding for early intervention services; and

(b) Giving [To give] families an opportunity to assist with the cost of services where there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be an income-based flat monthly fee for the duration of participation in early intervention services, as determined by:

1. Level of family gross income identified on last Federal Internal Revenue Service statement, as reported by family;

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2. Level of income matched with level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:

- a. Below 200 percent of poverty there shall be no payment;
- b. From 200 percent of poverty to ~~299~~ [300] percent the payment shall be twenty (20) dollars per month of participation;
- c. From 300 percent of poverty to ~~399~~ [400] percent the payment shall be thirty (30) dollars per month of participation;
- d. From 400 percent of poverty to ~~499~~ [500] percent the payment shall be forty (40) dollars per month of participation; or
- e. From 500 percent of poverty and over the payment shall be fifty (50) dollars per month of participation.

(b) Not apply to children eligible for Medicaid;

(c) Not prevent a child from receiving services if family shows to the satisfaction of the CSHCN an inability to pay:

1. By submitting to the CSHCN [~~state coordinator~~] a request to have the amount of the family share payment reduced or be exempted from paying the family share payment; and

2. By undergoing a financial review by the CSHCN which may:

a. Adjust the gross family income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's disability; and

b. Result in a calculation of a new family share payment amount based on the family's adjusted income compared to the appropriate percentage of the poverty level. If a recalculation is completed, the CSHCN shall conduct a review at least annually.

(d) Not apply to a family who chooses to use their private insurance if the amount of the insurance coverage is equal to or greater than the sum of the obligated amount of Family Share during the calendar year.

(4) A family who chooses to use its private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service. Payment of First Steps related coinsurance and deductibles shall be assumed by First Steps.

(5) The commission shall pursue third party payments for services received by Medicaid recipients pursuant to 907 KAR 1:011, Section 10, and 907 KAR 1:005.

Section 6. The provisions of this administrative regulation shall be effective with services submitted for payment on or after June 15, 2002.

JAMES GILDERSLEVE, Chair
ERIC FRIEDLANDER, Executive Director
MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: June 13, 2002

FILED WITH LRC: June 14, 2002 at 10 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Trish Howard or Eric Friedlander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

(b) The necessity of this administrative regulation: KRS 200.660 requires the cabinet to promulgate administrative regulation regarding this program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the reimbursement methodology for services provided through this program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Same as (c).

(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 reduces some of the reimbursement rates for services provided through the First Steps Program as a result of a time/cost study conducted by Solutions, Inc. In addition, it provides procedures for providers requesting additional units of

service, as well as enforces Medicaid requirement to access third party payments prior to accessing Medicaid funds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to control the 20% annual growth of this program due to the current critical budget shortfall.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require the promulgation of administrative regulations in order to implement this program.

(d) How the amendment will assist in the effective administration of the statutes: By promulgating this administrative regulation, the First Steps Program will be able to continue to provide much needed services to the vulnerable developmentally delayed children of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation potentially affects approximately 640 providers and 8,000 children annually.

(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 reduce the reimbursement rate for some of the services provided through this program. However, it will also allow for the continuation of services by providing for access to third-party insurance payments and Medicaid funding previously not accessed.

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

(a) Initially: The rate adjustment will decrease service expenditures by approximately \$900,000.00 resulting in a savings to the program. The fiscal impact is based on FY2001 service levels. The positive fiscal impact resulting from the overall decrease in payments to providers will be utilized in the next biennium toward anticipated program growth.

(b) On a continuing basis: Same

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Part C and Medicaid funding and state 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: An increase in fees or funding will not be necessary in order to implement this 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? 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 REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

KENTUCKY BOARD OF PHARMACY
(As Amended at ARRS, June 11, 2002)

201 KAR 2:105. Licensing and drug distribution requirements for drug manufacturers and wholesalers.

RELATES TO: KRS 315.010, 315.036, 21 CFR 205.1 to 205.7 [Chapter 315]

STATUTORY AUTHORITY: KRS 315.010, 315.036, 315.191(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.036 authorizes the board to promulgate administrative regulations to regulate the manufacturers and wholesalers of drugs. It also authorizes the board to require by administrative regulation, the maintenance of accurate records of all drugs manufactured, received and sold. This administrative regulation establishes the requirements for the regulation of manufacturers and wholesalers. [To establish uniform procedures and fees for the registration of all drug manufacturers and wholesalers and to implement the provisions of the Federal Prescription Drug Marketing Act of 1987, 21 USC sec. 321 et seq., 21 CFR 205.1 through 205.50; and to effect the federal act's requirement to license anyone in the wholesale distribution of prescription drugs. This applies to any person, partnership, corporation or other entity engaging in the wholesale distribution of prescription drugs within the Commonwealth.]

Section 1. Definitions. (1) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" is defined by KRS 315.010(12).

(5) "Prescription drug" is defined by KRS 315.010(21).

(6) "Wholesale drug distribution" means the distribution of legend drugs to persons other than consumers or patients and excludes a common carrier or individual retained solely to transport prescription drugs and the lawful distribution of prescription drug samples by manufacturers or their representatives, but shall not include the sale, purchase, or trade of a legend drug, or offer of same:

(a) By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;

(b) By hospitals or other health-care entities under common control;

(c) To alleviate emergency medical necessity or temporary shortage between pharmacies;

(d) By a pharmacist dispensing pursuant to a valid prescription order;

(e) By intracompany sales; or

(f) By blood banks.

(7) "Wholesaler" is defined by KRS 315.010(26). ["Wholesale drug distributor" is defined by KRS 315.040(12), and excludes a common carrier or individual retained solely to transport prescription drugs and the lawful distribution of prescription drug samples by manufacturers or their representatives.

(2) "Wholesale drug distribution" means the distribution of legend drugs to persons other than consumers or patients, but shall not include the sale, purchase, or trade of a legend drug, or offer of same:

(a) By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;

(b) By hospitals or other health-care entities under common control;

(c) To alleviate emergency medical necessity or temporary shortage between pharmacies;

(d) By a pharmacist dispensing pursuant to a valid prescription order;

(e) By intracompany sales;

(f) By blood banks.

(3) "Manufacturer" means anyone engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging or a drug or the labeling or relabeling of its container.

(4) "Prescription drug" means any human drug or medicinal gas required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug, and Cosmetic Act.

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(6) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(7) "Blood component" means that part of blood separated by physical or mechanical means.]

Section 2. Requirements. (1) A wholesaler or distributor shall apply for a permit from the board in accordance with KRS 315.036 and this administrative regulation. [License shall be acquired pursuant to KRS 315.036.]

(2) A separate permit [license] shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a permit holder shall not be required to obtain a permit [licensee need not seek licensure] under this section when the agent or employee is acting in the usual course of business or employment.

(4) A permit [license] shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including [but not limited to]:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security [as deemed appropriate by the Kentucky Board of Pharmacy or] as per label requirements or official United States Pharmacopoeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

(b) Physical separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled merchandise until they are destroyed or returned;

(c) Providing accurate and precise records of all goods shipped or received including source or recipient, date, quantity, itemized description, and any other information pertinent to the transaction;

(d) Providing proof of registration [All applicants for licensure as controlled substances wholesale drug distributors shall be registered] with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and shall comply with all DEA regulations.

(5) The Kentucky Board of Pharmacy may choose to adopt administrative regulations to include out-of-state distributors or may reciprocally accept in lieu thereof licensure valid by a comparable authority equally recognizing Kentucky's requirements.

Section 3. Qualifications for Permit [License]. (1) The minimum qualifications shall include:

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the

Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail distribution of controlled substances;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

5. Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

6. Compliance with the [licensing] requirements under any previously granted license or permit [licenses], if any; and

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section. ~~;~~ and

~~8. Any other factors or qualifications the Kentucky Board of Pharmacy considers relevant to and consistent with the public health and safety.~~

(b) The Kentucky Board of Pharmacy shall have the right to deny a permit [license] to an applicant if it determines that the granting of that permit [such a license] would not be in the public interest based on health and safety considerations.

(2) A permit shall not ~~[No license shall]~~ be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(3) A permitted [duly licensed] manufacturer or wholesaler may sell or distribute federal legend drugs only to the following:

(a) A currently permitted [licensed] manufacturer;

(b) A currently permitted [licensed] wholesaler;

(c) A currently licensed pharmacy;

(d) A currently licensed practitioner;

(e) A currently licensed hospital, but only for use by or in that hospital;

(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.

(4) A license issued pursuant to this administrative regulation may be suspended or revoked for failure to comply with the provisions of KRS 315.036 or this administrative regulation ~~[cause]~~.

Section 4. [License] Fees; Renewals. (1) An application for a permit [Applications for a license] shall be submitted to the Board of Pharmacy on "Application for a License to Operate as a Drug Wholesaler or Manufacturer (KBP W/M 9:92)". ~~[This form is incorporated by reference. It may be obtained, inspected, or copied at the Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) All permits [licenses] shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon proper application accompanied by the renewal fee set forth in 201 KAR 2:050 and shall be nontransferable.

Section 5. Standards: (1) Facilities.

(a) All buildings in which legend drugs are wholesaled, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) Buildings shall meet all applicable federal, state, and local standards. The facility shall have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed second-

dary containers that have been opened.

(c) A facility shall not be located in a residence.

(2) Security.

(a) A ~~[All]~~ wholesale drug distribution center ~~[centers]~~ shall be equipped with an alarm system to detect entry after hours.

(b) A wholesale drug distributor ~~[Wholesale drug distributors]~~ shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes ~~[but is not limited to,]~~ the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where legend drugs are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A permit holder ~~[Licensees]~~ shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs.

(e) Lists of officers, directors, managers and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping.

(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and readily available for inspection or photocopying by authorized law enforcement officials for a period of two (2) years following disposition of the drugs. These records shall include:

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

2. The identity and quantity of the drugs received and distributed or disposed of; and

3. The dates of receipt and distribution or other distribution of the drugs.

(b) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(4) Written policies and procedures.

(a) Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and to assure that the wholesale drug distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. Such crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale drug distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(d) There shall be written policies and procedures by which the wholesaler drug distributor exercises control over the shipping and receiving of all stock within the operation.

(5) Returned, damaged, and outdated prescription drugs. A wholesale operation shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods. When conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or

purity, the wholesale drug distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesale operation shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:

- (a) Any voluntary action on the part of the manufacturer;
- (b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and
- (c) Replacement of existing merchandise with an improved product or new package design.

(7)(a) ~~A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock [shall be adequately effected].~~

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the oldest inventory is distributed first.

(c) ~~A wholesale drug distributor [Wholesale drug distributors] shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 207, 210, and 211 of the Code of Federal Regulations.~~

~~Section 6. [Inspection Powers of the Kentucky Board of Pharmacy. The Kentucky Board of Pharmacy shall promulgate administrative regulations as may be necessary to carry out the purpose and enforce the provisions of this administrative regulation. All administrative regulations promulgated shall conform to and not conflict with the wholesaler drug distribution guidelines adopted by the U.S. Food and Drug Administration or any applicable federal, state, or local laws and regulations and shall permit the Kentucky Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect the premises and delivery vehicles, purporting or appearing to be used by any manufacturer or wholesaler, and audit records and operational procedures at reasonable times, in reasonable fashion, to the extent authorized by law.]~~

~~Section 7.] Pharmacist-in-Charge. A manufacturer shall designate a pharmacist-in-charge of the facility who shall be responsible to the board for security and recordkeeping. The pharmacist-in-charge shall [must] review the security and records by conducting an on-site inspection not less than quarterly and recording the results of those inspections in the policy and procedure manual.~~

~~Section 7. [8.] Violations. (1) A drug manufacturer or wholesaler shall not distribute legend drugs directly to a consumer or a patient or operate in a manner that endangers the public health.~~

~~(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the license.~~

~~Section 9. Incorporation by Reference. (1) "Application for a License to Operate as a Drug Wholesaler or Manufacturer" (KBP W/M 9:92) is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 23 Millcreek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

THOMAS S. FOSTER, PharmD, President
 APPROVED BY AGENCY: April 9, 2002
 FILED WITH LRC: April 10, 2002 at 11 a.m.

TOURISM AND ECONOMIC DEVELOPMENT CABINET
 Department of Fish and Wildlife Resources
 (As Amended at ARRS, June 11, 2002)

301 KAR 1:015. Boats and motor restrictions.

RELATES TO: KRS 150.010, 150.090, 150.620, 150.625, 150.990, 235.280, 235.990

STATUTORY AUTHORITY: KRS ~~[150.620, 150.625,]~~ 235.280
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of this state. KRS 150.620 and 150.625 authorize ~~[gives]~~ the department ~~[authority]~~ to promulgate administrative regulations governing lands and waters it has acquired. This administrative regulation is necessary to limit the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) Except as otherwise specified in this section, a person shall not operate on the lakes listed in this administrative regulation:

- (a) A houseboat;
- (b) A monohull boat, with a centerline length exceeding eighteen (18) feet, six (6) inches;
- (c) A pontoon boat with a float or decking exceeding twenty-two (22) feet;
- (d) A boat motor without an underwater exhaust; or
- (e) Except in a designated skiing zone, a boat faster than idle speed when passing a boat with an occupant actively engaged in fishing.

(2) A person shall not operate:

- (a) A monohull boat with a centerline length exceeding twenty-two (22) feet on:
 1. Guist Creek Lake;
 2. ~~[After February 28, 2004,]~~ Lake Malone; or
 3. Cedar Creek Lake.
- (b) A pontoon boat with a float or decking exceeding thirty (30) feet on:
 1. Lake Malone;
 2. Lake Beshear; or
 3. Cedar Creek Lake.
- (3) Length restrictions in this section shall not apply to a canoe.
- (4) No person shall operate a personal water craft as defined in KRS 253.010 on Cedar Creek Lake.

Section 2. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Lake Chumley, Lincoln County;
- (2) Dennie Gooch Lake, Pulaski County;
- (3) Marlin County Lake, Martin County; and
- (4) Kingdom Come Lake, Harlan County.

Section 3. A person shall not operate an internal combustion boat motor on:

- (1) Carter Caves Lake, Carter County;
- (2) Spurlington Lake, Taylor County;
- (3) Marion County Lake, Marion County;
- (4) Lake Washburn, Ohio County;
- (5) Bert Combs Lake, Clay County;
- (6) McNeely Lake, Jefferson County;
- (7) Lake Mauzy, Union County;
- (8) Carpenter Lake and Kingfisher Lakes, Daviess County;
- (9) Metcalfe County Lake, Metcalfe County;
- (10) Briggs Lake, Logan County;
- (11) Big Turner Lake, Ballard County;
- (12) Little Turner Lake, Ballard County;
- (13) Shelby Lake, Ballard County;
- (14) Mitchell Lake, Ballard County;
- (15) Happy Hollow Lake, Ballard County;
- (16) Burnt Slough, Ballard County;
- (17) Butler, Ballard County;
- (18) Sandy Slough, Ballard County;
- (19) Long Pond, Ballard County;
- (20) Cross Slough, Ballard County;
- (21) Little Green Sea, Ballard County;
- (22) Burnt Pond, Ballard County;
- (23) Arrowhead Slough, Ballard County;
- (24) Deep Slough, Ballard County;
- (25) Beaver Dam Slough, Ballard County;
- (26) Cypress Slough, Ballard County;
- (27) Twin Pockets Slough, Ballard County;
- (28) Lake Reba, Madison County;

- (29) Lincoln Homestead Lake, Washington County;
- (30) Goose, Muhlenberg County;
- (31) Island, Ohio County;
- (32) South, Ohio County;
- (33) Lebanon City Lake, Marion County; or
- (34) Mill Creek Lake, Wolfe County.

Section 4. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:

- (1) Shanty Hollow Lake, Warren County;
- (2) Bullock Pen Lake, Grant County;
- (3) Lake Boltz, Grant County;
- (4) Kincaid Lake, Pendleton County;
- (5) Elmer Davis Lake, Owen County;
- (6) Beaver Creek Lake, Anderson County;
- (7) ~~Herb Smith Lake, Harlan County;~~
- ~~(8) Corinth Lake, Grant County; and~~
- ~~(9) Swan Lake, Ballard County.~~

Section 5. A person shall not operate:

- (1) A boat motor larger than 150 horsepower on Lake Beshear, Cedar Creek Lake, or Lake Malone.
- (2) A motorboat faster than idle speed on:
 - (a) Greenbo Lake, Greenup County;
 - (b) Pan Bowl Lake, Breathitt County; or
 - (c) Wilgreen Lake, Madison County.

Section 6. A person ~~operating a boat [shall not operate a motor] larger than ten (10) horsepower shall not exceed idle speed at any time [for full speed use and shall use idle speed for larger motors]~~ on the following lakes:

- (1) Herb Smith/Cranks Creek Lake; and
- (2) Martins Fork Lake.

C. THOMAS BENNETT, Commissioner
 DR. JAMES RICH, Chairman
 ANN R. LATTA, Secretary

APPROVED BY AGENCY: April 15, 2002
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DEPARTMENT OF AGRICULTURE
Division of Animal Health
(As Amended at ARRS, June 11, 2002)

302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070, 9 CFR 92.301
 STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals ~~(the importing of an animal)~~ into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes a technique for the treatment of a mare imported into Kentucky from a country listed in 9 CFR 92.301 as a country affected by ~~[with]~~ contagious equine metritis (CEM).

Section 1. Definitions. (1) "Breeding" or "bred" means the natural covering of a mare.

(2) "CEM" means contagious equine metritis.

(3) "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium.

(4) ~~(3)~~ "Cleansing of a stallion" means thorough washing, using warm water, of the external genitalia of the stallion with the penis in full erection.

(5) ~~(4)~~ "Mare" means a female horse over 731 days of age.

(6) ~~(5)~~ "Set of swabs" means a swab obtained from the clitoral sinus and clitoral fossa. ~~"Mare" means a female horse over 731 days of age.~~

(7) "Breeding" means natural or artificial insemination of a mare.

(8) "CF test" means a complement fixation test on equine serum

~~for the detection of antibodies for contagious equine metritis (CEM) bacterium.~~

(4) "Set of cultures" means a culture is obtained from the clitoral sinus (if intact), and clitoral fossa.]

Section 2. A mare imported into Kentucky, for breeding, from a country known to be affected by CEM ~~[with CEM, before breeding,]~~ shall be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following procedure:

(1) Following arrival into Kentucky, the veterinarian shall obtain a set of swabs ~~[cultures]~~ from the mare on days one (1), four (4), and seven (7).

(2) On completing the set of swabs ~~[cultures]~~ on day seven (7), the accredited veterinarian shall manually remove all organic debris from the clitoral fossa and sinuses. The sinuses shall then be flushed with an approved ceruminolytic ~~[ceruminolytic]~~ agent until all remaining debris has been removed. The accredited veterinarian shall, for five (5) consecutive days, wash and clean (scrub), with a solution of not less than two (2) percent chlorhexidine in a detergent base, the external genitalia, vaginal vestibule, clitoral fossa, and clitoral sinuses. The clitoral fossa, clitoral sinuses, external genitalia, and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Veterinarian.

(3) After the ~~[above]~~ procedures established in subsections (1) and (2) of this section have been satisfactorily completed and all three (3) of the swabs are reported to the department as testing negative for CEM bacterium, the imported mare may be released from quarantine.

(4) Before the imported mare may ~~[can]~~ be bred in Kentucky, a swab shall be collected from the endometrium and cultured negative for CEM. This swab may be included with any of the three (3) ~~[either of the]~~ required sets of swabs, or for ~~[in the case of]~~ a pregnant mare, may be collected after foaling.

(5) An imported mare bred in Kentucky shall be prophylactically scrubbed and bred last of the group of mares bred during that session. The external genitalia of the covering stallion shall be cleansed, as defined ~~[prescribed]~~ in Section 1 of this administrative regulation, ~~[scrubbed and treated]~~ after breeding an imported mare ~~[and shall remain out of service for a minimum of twelve (12) hours]~~. The ~~[imported mare and the]~~ next three (3) mares bred to the ~~[same]~~ stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and ~~[as well as]~~ the name of the covering stallion, date, and time bred.

(6) It shall be the responsibility of the farm where the stallion is standing to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a postbreeding CF test is required.

(7) The farm where the stallion is standing shall contact the Kentucky State Veterinarian and provide the name, breeding date, time, and location of the imported mare covered, and ~~[as well as]~~ the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare. ~~[CF test, fifteen (15) to forty (40) days postbreeding.]~~

Section 3. The imported mare may be released from quarantine when ~~[if]~~:

(1) The requirements of Sections 1 and 2 of this administrative regulation have been completed; and

(2) The required specimens ~~[and tests]~~ taken from the mare ~~[are]~~ test negative ~~[and culture negative]~~ for the CEM bacterium.

Section 4. A CEM culture positive mare shall remain under quarantine and shall be treated ~~[follow the treatment]~~ as described in Section 2(2) and (5) ~~[(3)]~~ of this administrative regulation. The mare shall have sets of swabs obtained, as described in Section 2(1) of this administrative regulation, no less than twenty-one (21) days after the last day of treatment. ~~[No less than twenty-one (21) days after the last day of treatment, the mare shall have sets of cultures obtained as described in Section 2(1) of this administrative regula-~~

~~tion.~~ If all required specimens taken from the mare ~~[are]~~ test negative ~~[and culture negative]~~ for the CEM bacterium, the mare may be released from quarantine ~~[eligible for [a] quarantine release].~~

Section 5. A user fee shall be assessed for an equine import. (1) An import broker shall pay a fee for each shipment of mares which arrives at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be forty (40) dollars per hour with a minimum of two (2) hours time charged.

(b) For state-recognized holidays, the assessed fee shall be eighty (80) dollars per hour with a minimum of two (2) hours charged. The holiday fee shall [will] apply to all mares received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday.

(2) The broker shall pay by check, made payable to the Kentucky State Treasurer, ~~[to the Kentucky Department of Agriculture]~~ the assessed fee within ninety-six (96) hours of receipt of the charges.

(3) Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

BILLY RAY SMITH, Commissioner
MARK FARROW, General Counsel

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DEPARTMENT OF AGRICULTURE
Division of Animal Health
(As Amended at ARRS, June 11, 2002)

302 KAR 20:140. Breeding shed for imported female equines.

RELATES TO: KRS 257.070

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes [To establish] the necessary requirements to allow an imported female equine over 731 days of age to enter a breeding shed in Kentucky.

Section 1. Definitions. (1) "Breeding" or "bred" means the natural covering of a mare.

(2) "CEM" means contagious equine metritis.

(3) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies to the contagious equine metritis ~~[(CEM)]~~ bacterium.

(4) ~~[(3)]~~ "Cleansing of a stallion" means the thorough washing, using warm water, of the external genitalia of the stallion with the penis in full erection.

(5) ~~[(4)]~~ "Maiden mare" means a female equine over 731 days of age that has not been covered by a stallion.

(6) ~~[(5)]~~ "Set of swabs" means a swab from the clitoral sinus and clitoral fossa. ~~[As used in this administrative regulation, unless the context clearly requires otherwise:~~

(1) "Breeding" means natural or artificial insemination of a mare.

(2) "CF test" means a complement-fixation test of equine serum for the detection of specific antibodies of CEM bacterium.

(3) "Set of cultures" from the mare means a culture from the clitoral sinus (if intact), clitoral fossa, cervix or endometrium of the uterus.

(4) "Maiden mare" means a female equine over 731 days of age which has not been covered by a stallion.]

Section 2. Maiden mares over 731 days of age at the time of

importation ~~[coming]~~ from any country outside the continental United States, its territories, possessions, or Canada shall, **before being bred in Kentucky, [be required to] have [will have one (1) negative prebreeding CF test and] two (2) sets of [negative] swabs testing negative for CEM bacterium with a minimum of seventy-two (72) hours lapsing between collecting the swabs. One (1) of the two (2) sets of swabs shall include a swab collected from the endometrium. [cultures. One (1) set of cultures must be obtained in early estrus; the other may be taken during a period of seven (7) to fourteen (14) days before or after the culture in estrus.]** Imported maiden mares bred in Kentucky shall ~~[will]~~ be prophylactically scrubbed and bred last of any group of mares bred during that session. After the breeding, the external genitalia of the covering stallion shall be cleansed as defined [prescribed] in Section 1 of this administrative regulation [will be scrubbed and treated after breeding and will remain out of service for a minimum of twelve (12) hours].

(1) ~~The [imported maiden mare and the] next three (3) mares bred to the [same] stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and [as well as] the name of the covering stallion, date, and time bred.~~

(2) It shall be the responsibility of the farm where the stallion is standing to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a postbreeding CF test is required.

(3) The farm where the stallion is standing shall contact the Kentucky State Veterinarian and provide the name, breeding date, time, and location of the imported mare covered, and ~~[as well as] the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare. [will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.]~~

Section 3. Mares over 731 days of age imported from any country outside the continental United States, its territories, possessions, or Canada that are not listed in the Code of Federal Regulations as being affected by CEM shall, **before being bred in Kentucky, [with CEM will] have two (2) negative sets of swabs with a minimum of seventy-two (72) hours lapsing between collecting the swabs. Prior to being bred, a swab shall be collected from the endometrium and tested negative for CEM. This swab may be included with either of the required sets, or for [in the case of] a pregnant mare, may be collected after foaling. [one (1) negative prebreeding CF test and two (2) negative sets of cultures. One (1) set of cultures must be obtained in early estrus; the other may be taken during a period of seven (7) to fourteen (14) days before or after the culture in estrus.]** Imported mares, addressed in this section, bred in Kentucky shall ~~[will]~~ be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering stallion shall be cleansed as defined in Section 1 of this administrative regulation ~~[prescribed] [will be scrubbed and treated] after breeding [and will remain out of service for a minimum of twelve (12) hours].~~

(1) ~~The [imported mare and the] next three (3) mares bred to the [same] stallion, after the imported mare, shall have a blood sample collected and submitted for testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and [as well as] the name of the covering stallion, date, and time bred.~~

(2) It shall be the responsibility of the farm where the stallion is standing to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that the postbreeding CF test is required.

(3) The farm where the stallion is standing shall contact the Kentucky State Veterinarian and provide the name, breeding date, time, and location of the imported mare covered, and ~~[as well as] the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare. [will have a CF test taken fifteen (15) to forty (40) days after the mare is bred.]~~

Section 4. Mares, other than maidens, over 731 days of age imported **into Kentucky for breeding** from countries listed in the Code of Federal Regulations as being affected with CEM **shall be**

~~reated [are required to be handled]~~ in accordance with 302 KAR 20:110.

BILLY RAY SMITH, Commissioner
 MARK FARROW, General Counsel
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DEPARTMENT OF AGRICULTURE
 Division of Animal Health
 (As Amended at ARRS, June 11, 2002)

302 KAR 20:220. Pseudorabies: eradication and control.

RELATES TO: KRS 246.210, 257.050, 257.080, 257.110 to 257.170, 257.480 ~~[Chapter 257]~~

STATUTORY AUTHORITY: KRS 257.020, 257.030 ~~[257.440, 257.420, 257.030, 257.480]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of livestock. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer any provision of KRS Chapter 257. ~~This administrative regulation establishes [To establish] [provide] procedures for approving [enabling the Board of Agriculture to approve] a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies. [These procedures are necessary in order to achieve pseudorabies control and eradication.]~~

Section 1. Definitions. (1) "Breeding swine" means male or female porcines which are sexually intact, six (6) months of age or older, and ~~[which are]~~ specifically used or intended to be used for reproduction.

(2) "Circle testing" means serological sampling of swine required by an official pseudorabies epidemiologist in herds that are within one and one-half (1.5) miles of an ~~[a known]~~ infected herd.

(3) "Depopulation" means a procedure ~~that clears [where] the premises [is cleared] of all swine [at a specified time].~~

~~(a) "Mandatory depopulation" means the required removal of all swine from a premises for which no official herd plan was developed or followed or the herd plan used is not effective in the elimination of pseudorabies.~~

~~(b) "Official depopulation" means a herd plan for a herd with an infection rate of more than ten (10) percent recommended by an official epidemiologist where the herd owner agrees to clear the premises of all swine in a manner approved by the state veterinarian and where indemnity is paid on all breeding swine in the herd.~~

~~(c) "Voluntary depopulation" means a herd plan for a herd with an infection rate of less than ten (10) percent chosen by the owner where the premises is cleared of all swine and where indemnity is paid only for seropositive breeding swine.~~

(4) "Exposed swine" means any swine that has been in ~~[known]~~ contact with an animal infected with pseudorabies. This includes all swine in an ~~[a known]~~ infected herd.

(5) "Herd" means ~~[shall mean]~~ all porcine animals maintained for any purpose on common grounds, under common ownership or supervision, including animals which may be geographically segregated, and have exchange ~~[interchange]~~ or movement of animals without regard to health status.

(6) "Indemnity" means monies paid to the owner by ~~state or federal [the state federal] agencies in addition to the salvage value of the swine.~~

(7) "~~[Known]~~ Infected herd" means a ~~[any]~~ herd in which swine have been determined, by an official pseudorabies epidemiologist or state veterinarian, to be infected with pseudorabies ~~[by an official pseudorabies epidemiologist or state veterinarian].~~

(8) "Mandatory depopulation" means the required removal of all swine from a premises where an official herd cleanup plan was not developed, followed, or was ineffective in the elimination of pseudorabies.

(9) "Official depopulation plan" means a depopulation plan for a herd with an infection rate of more than ten (10) percent and where

indemnity is paid on all breeding swine in the herd. ~~[The plan shall be recommended by an official epidemiologist, approved by the state veterinarian, and agreed to by the herd owner.]~~

(10) "Official herd cleanup plan" means a plan developed by an official pseudorabies epidemiologist in consultation with the herd owner and his ~~[or her]~~ veterinary practitioner ~~[when applicable]~~ and approved by the state veterinarian, for the purpose of eliminating pseudorabies from the herd. ~~[The [This] plan may include test and slaughter, depopulation, offspring segregation, with or without vaccination, or a combination of any approved procedures [procedure].]~~

~~(11) [(9)]~~ "Official pseudorabies epidemiologist" means a state or federal employed veterinarian, designated by the state veterinarian and the federal veterinarian in charge, to investigate, diagnose, and make recommendations concerning suspected pseudorabies in swine.

(12) ~~[(49)]~~ "Official pseudorabies test" means any serological test, approved by the state veterinarian for the diagnosis of pseudorabies, which ~~[and]~~ is licensed or approved by the United States Department of Agriculture pursuant to 9 CFR 52.1.

(13) ~~[(44)]~~ "Official random sample test" means a group sampling of swine utilizing serological tests which provide a ninety-five (95) percent probability of detecting pseudorabies in a segregated group of swine when at least ten (10) percent of the animals tested are seropositive for pseudorabies.

(14) ~~[(42)]~~ "Positive animal" means an animal which has given a positive reaction to an official test for the detection of pseudorabies, and is so classified by an official epidemiologist, or ~~if [where] the pseudorabies virus has been found in the body of an animal or in the body discharge of an animal.~~

(15) ~~[(43)]~~ "Pseudorabies" means a communicable, contagious, and infectious disease caused by a herpes virus affecting livestock and other animals.

(16) ~~[(44)]~~ "Pseudorabies monitored feeder pig herd" means a swine breeding herd that has tested ~~[been sampled and was] negative to an official pseudorabies serologic test during the last twelve (12) months, pursuant to Section 2 of this administrative regulation.~~

(17) ~~[(45)]~~ "Pseudorabies vaccine" means a pseudorabies vaccine licensed by the United States Department of Agriculture pursuant to 21 USC 151 et seq. and 9 CFR 85.1.

(18) ~~[(46)]~~ "Qualified pseudorabies negative herd" means a swine herd that is free of pseudorabies and maintains a pseudorabies free status as determined by periodic testing of breeding swine.

~~[(47)] "Permitted swine slaughter feedlot" means a premises where swine of unknown health status are fed for slaughter under procedures approved by the state veterinarian.]~~

(19) ~~[(48)]~~ "Salvage value" means the carcass worth of an animal.

(20) ~~[(49)]~~ "Test and slaughter" means a herd plan where animals are tested and, if test positive, ~~[positive animals] are removed from the herd to slaughter within thirty (30) days of classification. [Additional tests shall be performed until all positive animals in the herd are identified and slaughtered.] [and additional tests are performed on the herd.]~~

(21) "Voluntary depopulation plan" means a depopulation plan chosen by the herd owner, for a herd with an infection rate of less than ten (10) percent and where indemnity is paid only for seropositive breeding swine.

Section 2. Testing Requirements for a Swine Breeding Herd to Qualify as a Pseudorabies Monitored Feeder Pig Herd. (1) To qualify as a pseudorabies monitored feeder pig herd the following testing requirements shall apply:

(a) If the size of the swine breeding herd is ten (10) animals or less, ~~[then]~~ all animals shall be tested;

(b) If the size of the swine breeding herd is eleven (11) to thirty-five (35) animals, ~~[then]~~ ten (10) animals shall be tested; and

(c) If the size of the swine breeding herd is thirty-six (36) or more animals, ~~[then]~~ thirty (30) percent or thirty (30) animals, whichever is less, shall be tested.

(2) Tested breeding swine shall be selected at random from all age groups and shall include ~~[including]~~ herd boars.

(3) All animal groups to be tested shall be proportionately represented.

(4) A pseudorabies monitored feeder pig herd may also be clas-

sified as a swine breeding herd ~~(that is)~~ not known to be infected in a Stage III or ~~(a)~~ Stage IV ~~[, or Stage V]~~ state or area.

Section 3. Procedures. (1) The owner of an ~~(a known)~~ infected herd shall apply to the state veterinarian for approval of an official herd cleanup plan within thirty (30) days of notification that his herd is classified as an ~~(a known)~~ infected herd.

(2) An ~~(The)~~ official herd cleanup plan may include test and slaughter, depopulation, offspring segregation, with or without vaccination, or a combination of those approved procedures, and shall provide as follows:

(a) Within ninety (90) days from the date of notification of classification as an ~~(a known)~~ infected herd, the owner shall implement an approved herd cleanup plan.

(b) The owner of the herd shall cooperate with the department in conducting the necessary testing, classification, and supervision of the herd.

(c) Animals within the herd shall be removed to slaughter, ~~(or)~~ depopulated, offspring segregation, with or without vaccination, or a combination of those approved procedures under the supervision of the state veterinarian and as outlined ~~(provided)~~ in the official herd cleanup plan.

(d) Pseudorabies vaccine shall be used only with approval of the state veterinarian.

(3) If ~~(When)~~ official depopulation is the approved herd cleanup plan, the plan shall:

(a) Be recommended by an official epidemiologist, approved by the state veterinarian and agreed to by the herd owner; and

(b) Require the premises to be cleared of breeding swine within two (2) months of ~~(from)~~ the date of approval and cleared of all swine within eight (8) months of the plan approval date.

(4) If test and slaughter is the approved herd cleanup plan, additional tests shall be performed until all positive animals in the herd are identified and slaughtered.

(5) The official herd cleanup plan shall provide for the completion of all requirements set out in the cleanup plan within twenty-four (24) months of the plan ~~(from the)~~ approval date ~~(of the plan)~~. Except ~~(However)~~, the state veterinarian may approve additional time, not to exceed ninety (90) days, ~~(to complete the official cleanup plans not to exceed ninety (90) days)~~ for completion of all requirements set out in the plan.

(6) ~~(5)~~ The herd cleanup plan may be changed or amended if ~~(when)~~ approved by the official pseudorabies epidemiologist and the state veterinarian.

(7) ~~(6)~~ If ~~(When)~~ the owner of a pseudorabies infected herd does not develop an official herd cleanup plan, if ~~(or when)~~ the state veterinarian determines that the official herd cleanup plan has not or will not effectively eliminate pseudorabies from a swine herd, or if ~~(, and)~~ that approval or continuation of the official herd cleanup plan is unlikely to effectively eliminate pseudorabies from the herd, the board or its authorized agents shall order depopulation as provided by KRS 257.110. The following procedures shall apply:

(a) Notification to the owner of the order of depopulation shall be hand-delivered to the owner or mailed to the owner's business address by certified mail. This notification shall include test results and other appropriate documentation ~~(documents)~~ supporting the depopulation order.

(b) The owner shall have fifteen (15) days from receipt of notification of the depopulation order to appeal the ~~(said)~~ order by written request to the state veterinarian stating that he ~~(or she)~~ disagrees with the ~~(said)~~ order. If no appeal is received within the fifteen (15) day time period, the ~~(this time, an)~~ order of depopulation shall be executed ~~(issued)~~.

(c) The owner may submit written arguments or may request ~~(schedule)~~ a conference with the state pseudorabies epidemiologist and the state veterinarian within fifteen (15) days of the written request appealing the ~~(said)~~ order.

(d) The owner shall be notified by certified mail within seven (7) days of ~~(after)~~ receipt of written arguments or following the conference date of ~~(conference as to)~~ the state veterinarian's final ruling of ~~(or)~~ the appeal.

(e) If ~~(When)~~ mandatory depopulation is ordered, all breeding swine shall be removed from premises for slaughter within two (2)

months and all other swine shall be removed from premises within eight (8) months of owner's receipt of the depopulation order.

(f) The premises shall meet quarantine release as required in Section 7 ~~(8)~~ of this administrative regulation.

Section 4. Pseudorabies Program Testing. (1) Within thirty (30) days of the department's ~~(a)~~ request for testing ~~(by the department)~~, the owner of the swine shall submit his ~~(their)~~ swine for required testing and provide the department with the necessary facilities and assistance required for conducting testing.

(2) Pseudorabies testing shall be in addition to the testing requirements set out in 302 KAR 20:210~~(,)~~ and may include random sample testing ~~(test)~~ or complete herd testing ~~(test)~~ as determined by the state veterinarian.

(3) An official random sample test shall include all animals in a segregated unit or a minimum of thirty (30) animals, whichever is less.

(4) Expenses incurred in collection of blood samples of ~~(in)~~ infected herds, circle testing, slaughter traces, and epidemiological tracings may be paid or reimbursed, if funds are available, in an amount specified and approved by the state veterinarian pursuant to 302 KAR 20:230.

(5) Expenses incurred in serological testing may be paid by state-federal funds if ~~(when)~~ samples are submitted to the University of Kentucky Animal Diagnostic Laboratory, Breathitt Veterinary Center, or a state-federal laboratory designated by 9 CFR 85.1, footnote 5 ~~(the state veterinarian)~~.

(6) Contract for fee basis. The state veterinarian may provide ~~(for)~~ reimbursement for payment of the expenses authorized in this administrative regulation by a fee-basis contract or agreement with a veterinary practitioner accredited and licensed in Kentucky.

Section 5. Movement of Qualified and Monitored Swine. (1) Testing shall be the responsibility of the seller. All breeding swine in Kentucky offered for sale to a Kentucky producer shall be negative to an official test within thirty (30) days prior to the date of change of ownership, or shall ~~(the swine)~~ ~~(must)~~ originate directly from a qualified pseudorabies negative herd.

(2) Feeder pigs from ~~(a)~~ qualified pseudorabies negative ~~(herd, or)~~ herds with a valid Certified Feeder Pig Producer Card (CFPP), or herds with a valid Pseudorabies Surveillance Card (PS) may be moved without individual identification from an ~~(the)~~ originating Kentucky farm to another Kentucky farm for purposes of feeding for slaughter if ~~(provided)~~ ~~(providing)~~ all feeder pigs on the recipient farm are from the same originating herd. Approval of the State Veterinarian and compliance with requirements of 302 KAR 20:210 shall be required before swine may be ~~(are)~~ moved. ~~(when all other requirements of 302 KAR 20:210 are met and with specific approval of the Kentucky State Veterinarian)~~.

(3) Swine originating from a state which qualifies for Stage IV or V under the national program standards may enter Kentucky without a test unless a test prior to entry for exhibition or sale is required by the state veterinarian because there has been a break in Stage IV or Stage V status or there has been an exposure to pseudorabies.

~~(Section 6. Permitted Swine Slaughter Feedlots. Permitted swine slaughter feedlots shall be permitted under the authority and direction of the state veterinarian. Permitted swine slaughter feedlots shall comply with the following requirements.~~

~~(1) Owner shall have a permit which is issued by the state veterinarian and renewed annually.~~

~~(2) All owners are required to have a Kentucky livestock dealer's license.~~

~~(3) Known pseudorabies positive or pseudorabies exposed swine shall not enter feedlot premises.~~

~~(4) Shall not be permitted within a two (2) mile radius of a qualified pseudorabies negative herd or pseudorabies monitored feeder pig herd.~~

~~(5) All swine owners within a two (2) mile radius of a permitted swine slaughter feedlots shall be notified prior to the issuance of a permitted swine slaughter feedlot permit.~~

~~(6) All swine leaving permitted premises shall be sold for slaughter through a state-federal market approved to handle~~

~~slaughter swine only or directly to an approved state federal slaughter establishment.~~

~~(7) A swine breeding operation shall not be maintained on the same premises or on other farms under the same management without all swine being under quarantine.~~

~~(8) Records of sales and purchases shall be kept as directed by the state veterinarian.~~

~~(9) All swine entering a permitted swine slaughter feedlot premises shall be identified with an official slaughter ear tag.~~

~~(10) All swine must weigh 150 pounds or more to be eligible for entry to a permitted swine slaughter premises.~~

~~(11) Boars and bred females shall not enter or be maintained in a permitted swine slaughter feedlot.~~

~~(12) Only swine from a Kentucky farm of origin shall be eligible for entry into a permitted swine slaughter feedlot.~~

~~(13) Permit must be presented when the permit holder is buying and selling swine at the market.~~

~~(14) An application for a permitted swine slaughter feedlot shall not be denied under the authority of the state veterinarian without first going before the Board of Agriculture.]~~

Section 6. ~~[7.]~~ Indemnity. (1) State indemnity funds, if available, shall be paid in the following amounts for swine ~~[only for the following classes of swine that are]~~ sent directly to slaughter ~~[in the following amounts]:~~

(a) Twenty-five (25) dollars per head for all seropositive breeding swine ~~if [when]~~ test and slaughter, voluntary depopulation, or a herd plan other than official depopulation or mandatory depopulation is the herd cleanup plan.

(b) Fifty (50) dollars per head for ~~[on]~~ all breeding swine ~~if [where]~~ official depopulation is the official herd cleanup plan.

(2) In order to be eligible for indemnity, pursuant to KRS 257.120(3), ~~[any]~~ swine shall ~~[on which indemnity is requested must]~~ have been in Kentucky for six (6) months prior to the ~~[time of the]~~ first test determining pseudorabies infection within a herd.

(3) In order to be eligible for state indemnity funds, pursuant to Section 3 of this administrative regulation, a written depopulation agreement shall be signed by the owner seeking state indemnity. Authorization for depopulation and for the payment of indemnity shall be approved by the state veterinarian. ~~[and]~~ The amount of indemnity shall [is to] be stated prior to ~~[the]~~ signing ~~[of]~~ the agreement.

(4) The refusal of the state veterinarian to approve payment of state indemnity funds for any reason set out in KRS 257.120(4) shall not restrict or otherwise limit the state veterinarian's authority to order slaughter or depopulation of infected or exposed porcine animals.

Section 7. ~~[8.]~~ Quarantine Release. (1) ~~[Known]~~ Infected herds and premises shall be released from quarantine when:

(a) The herd has been depopulated for at least thirty (30) days and the premises cleaned and disinfected. If the premises is repopulated, the herd shall have a negative test thirty (30) to sixty (60) days after repopulation.

(b) If ~~[When]~~ test and slaughter was the official herd cleanup plan, the herd shall have two (2) negative tests. The first test shall be no less than thirty (30) days after the last positive animal has been sold to slaughter. The second test shall be more than sixty (60) days after the last positive animal is sold for slaughter. The second test shall include all breeding swine; all [and] other swine on the premises shall be randomly [random] sampled.

(2) Other quarantined herds shall not be released until after a negative test, as directed by the official pseudorabies epidemiologist, and quarantine release approved by the state veterinarian.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: April 9, 2002

FILED WITH LRC: April 9, 2002 at 11 a.m.

JUSTICE CABINET
 Kentucky Department of Corrections
 (As Amended at ARRS, June 11, 2002)

501 KAR 6:020. Corrections 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:

(a) "Department of Corrections Policies and Procedures, Volume 1, June 11, 2002 [April 15, 2002] [September 12, 2004]":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 1.4 The Monitoring and Operation of Private Prisons
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.1 Code of Ethics
- 3.3 Holding of Second Jobs by Corrections' Employees
- 3.4 Equal Employment Opportunity Complaint Procedure (Added 4/15/02)
- 3.5 Sexual Harassment
- 3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders
- 3.7 Shifts, Posts and Days Off Assignment
- 3.12 Institutional Staff Housing
- 3.15 Antiharassment Policy
- 3.18 Employee Insurance Coverage
- 3.20 Communication and Recording Devices
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.6 Operation and Safety of Corrections Firing Ranges
- 4.7 Uniformed Employee Dress Code
- 5.1 Research and Survey Projects (Added 4/15/02)
- 6.1 Open Records Law
- 6.5 E-mail
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.2 Fire Safety
- 8.6 Extraordinary Occurrence Report
- 8.7 Notification of Extraordinary Occurrence
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 9.20 Electronic Detection Equipment (Added 4/15/02)
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 11.2 Nutritional Adequacy of the Diet (Amended 4/15/02)
- 11.4 Alternative Dietary Patterns (Amended 4/15/02)
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.6 Sex Offender Treatment Program

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13.7	Involuntary Psychotropic Medication Policy	27-06-02	Equal Access to Services
13.8	Substance Abuse Treatment Program	27-07-01	Cooperation with Law Enforcement Agencies
13.9	Dental Services	27-08-01	Use of Force [(Amended 9/12/01)]
13.10	Serious Infectious Disease	27-09-01	Kentucky Community Resources Directory
13.11	Employee Tuberculosis Program	27-10-01	Pretrial Diversion
14.1	Investigation of Missing Inmate Property	27-11-02	Prerelease Probation
14.2	Personal Hygiene Items	27-12-01	Supervision: Case Classification
14.3	Marriage of Inmates	27-12-02	Risk Assessment
14.4	Legal Services Program <u>(Amended 4/15/02)</u> [(Amended 9/12/01)]	27-12-03	Initial Interview
14.5	Board of Claims	27-12-04	Conditions of Supervision and Request for Modification
14.6	Inmate Grievance Procedures	27-12-05	Releasee's Report
15.1	Hair, Grooming and ID Card Standards [(Amended 9/12/01)]	27-12-06	Grievance Procedures for Offenders
15.2	Offenses and Penalties <u>(Amended 4/15/02)</u> [(Amended 9/12/01)]	27-12-07	Employment, Educational and Vocational Referrals
15.3	Meritorious Good Time	27-12-08	Supervision Plan
15.5	Restoration of Forfeited Good Time	27-12-09	Casebook
15.6	Adjustment Procedures and Programs <u>(Amended 4/15/02)</u>	27-12-11	Guidelines for Monitoring Financial Obligations
15.7	Inmate Account Restriction	27-12-13	Community Service Work [(Amended 9/12/01)]
15.8	Unauthorized Substance Abuse Testing	27-12-14	Offender Travel
16.1	Inmate Visits	27-13-01	Drug and Alcohol Testing of Offenders [(Amended 9/12/01)]
16.2	Inmate Correspondence <u>(Amended 4/15/02)</u> [(Amended 9/12/01)]	27-13-02	Alcohol Detection
16.3	Inmate Access to Telephones	27-14-01	Interstate Compact Transfers
16.4	Inmate Packages [(Amended 9/12/01)]	27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
17.1	Inmate Personal Property [(Amended 9/12/01)]	27-15-01	Supervision Reports, Violations and Unusual Incidents
17.2	Assessment Center Operations	27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
17.3	Controlled Intake of Inmates	27-17-01	Absconder Procedures
		27-18-01	Probation and Parole Issuance of Detainer or Warrant
		27-19-01	Preliminary Revocation Hearing
		27-20-01	Division of Probation and Parole Controlled Intake Program
		27-20-02	Prisoner Intake Notification
		27-20-03	Prisoner Status Change
		27-21-01	Apprehension and Transportation of Probation and Parole Violators
		27-23-01	In-state Transfer
		27-24-01	Closing Supervision Report
		27-24-02	Reinstatement of Offenders to Active Supervision
		27-26-01	Assistance to Former Offenders (Clients) and Dischargees <u>(Amended 4/15/02)</u>
		27-27-01	Restoration of Civil Rights [(Amended 9/12/01)]
		27-28-01	Firearms or Explosives Restoration
		27-30-01	Offender Registration
		27-30-02	Conditional Discharge of Sex Offenders
		27-31-01	Use of Chemical Agents in Probation and Parole
		28-01-01	Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments
		28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
		28-01-03	Presentence, Postsentence, Supplemental and Partial Investigations
		28-01-08	Probation Parole Investigation Reports; Partial Investigation Reports and Submission Schedule
		28-01-09	Release of Information of Factual Content on Presence or Postsentence Investigation Reports
		28-03-01	Parole Plans, Halfway Houses, Extended Furlough, Sponsorship, and Gradual Release
		28-03-02	Expedient Release Parole Plans
		28-04-01	Furlough Verifications
		28-05-01	Out-of-state Investigations

(b) "Department of Corrections Policies and Procedures, Volume II, April 15, 2002 ~~[(September 12, 2001)]~~":

18.1	Classification of the Inmate		
18.2	Central Office Classification Committee		
18.5	Custody and Security Guidelines <u>(Amended 4/15/02)</u> [(Amended 9/12/01)]	27-23-01	In-state Transfer
18.7	Transfers	27-24-01	Closing Supervision Report
18.9	Out-of-state Transfers	27-24-02	Reinstatement of Offenders to Active Supervision
18.11	Placement for Residential Mental Health Treatment [(Amended 9/12/01)]	27-26-01	Assistance to Former Offenders (Clients) and Dischargees <u>(Amended 4/15/02)</u>
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill	27-27-01	Restoration of Civil Rights [(Amended 9/12/01)]
18.13	Population Categories	27-28-01	Firearms or Explosives Restoration
18.15	Protective Custody	27-30-01	Offender Registration
18.16	Information to the Parole Board [(Amended 9/12/01)]	27-30-02	Conditional Discharge of Sex Offenders
18.17	Interstate Agreement on Transfers	27-31-01	Use of Chemical Agents in Probation and Parole
18.18	International Transfer of Inmates	28-01-01	Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments
19.1	Government Services Projects	28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
19.3	Inmate Wage Program		
20.1	Educational Programs and Educational Good Time <u>(Amended 4/15/02)</u> [(Amended 9/12/01)]	28-01-03	Presentence, Postsentence, Supplemental and Partial Investigations
21.2	Boot Camp Program	28-01-08	Probation Parole Investigation Reports; Partial Investigation Reports and Submission Schedule
22.1	Privilege Trips		
23.1	Religious Programs	28-01-09	Release of Information of Factual Content on Presence or Postsentence Investigation Reports
25.1	Gratuities		
25.2	Public Official Notification of Release of an Inmate	28-03-01	Parole Plans, Halfway Houses, Extended Furlough, Sponsorship, and Gradual Release
25.3	Prerelease Program		
25.4	Institutional Inmate Furloughs	28-03-02	Expedient Release Parole Plans
25.6	Community Center Program [(Amended 9/12/01)]	28-04-01	Furlough Verifications
25.8	Extended Furlough <u>(Amended 4/15/02)</u>	28-05-01	Out-of-state Investigations
25.10	Administrative Release of Inmates		
25.11	Victim Notification [(Amended 9/12/01)]		

(c) "Department of Corrections Policies and Procedures, Volume III, April 15, 2002 ~~[(September 12, 2001)]~~":

27-01-01	Probation and Parole Procedures [(Amended 9/12/01)]
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula [(Amended 9/12/01)]
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of General Counsel, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

VERTNER L. TAYLOR, Commissioner
 APPROVED BY AGENCY: April 8, 2002
 FILED WITH LRC: April 15, 2002 at 8 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
 Kentucky Board of Education
 Department of Education
 (As Amended at ARRS, June 11, 2002)

702 KAR 1:035. Group health and life insurance.

RELATES TO: KRS 161.158

STATUTORY AUTHORITY: KRS 156.070, 161.159

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.158 authorizes local boards of education to administer group insurance coverage for its employees. KRS 161.159 requires the Kentucky Board of Education to promulgate an administrative regulation to implement the life insurance program for local school district employees. This administrative regulation establishes requirements [provides the basis] for Department of Education administration of the group health and life insurance programs for certified and non-certified employees of local boards of education and interlocal educational cooperatives.

Section 1. Definitions. [The following definitions shall apply to this administrative regulation:]

(1) "Blended employee" means an employee having:

(a) The expectation that he is to be employed for the full school term (or the remainder of the school term) as defined in KRS 158.070 in a position with no state certification required;

(b) The expectation that also he is to be employed for the full school term (or the remainder of the school term) as established in KRS 158.070 in a position with state certification required;

(c) A combined work hours requirement equal to a minimum of seventy (70) percent of the school day or month as established in KRS 158.060; and

(d) Status as a beneficiary or participant in either of the two (2) retirement systems, CERS or KTRS.

(2) "Interlocal educational cooperative" means two (2) or more local boards of education governed by an interlocal cooperation agreement described in ~~[by]~~ KRS 65.210 through 65.300 and formed to make educational programs and services more efficiently and effectively available to boards of education on a multidistrict basis.

(3) "Regular, full-time, certified employee" means an employee with the expectation that he is to perform duties for the full school term (or the remainder of the school term) as established in KRS 158.070, and the employment will not require less than seventy (70) percent of the school day or school month as defined in KRS 158.060.

(4) "Regular, full-time, noncertified employee" means an employee having the expectation that he is to be employed for the full school term (or the remainder of the school term) as established in KRS 158.070, and whose assignments require a minimum of eighty (80) hours per school month as established in KRS 158.060.

(5) "Unpaid leave" means leave time without pay beginning the first day of the month following an employee's last paid working day. ~~["Regular, full-time, noncertified employee" means an employee having the expectation that he is to be employed for the full school term (or the remainder of the school term) as defined in KRS 158.070, and whose assignments require a minimum of eighty (80) hours per school month as defined in KRS 158.060.~~

(2) "Regular, full-time, certified employee" means an employee with the expectation that he is to perform duties for the full school term (or the remainder of the school term) as defined in KRS 158.070 but in no instance shall such employment require less than seventy (70) percent of the school day or school month as defined in KRS 158.060.

(3) "Interlocal educational cooperative" means two (2) or more local boards of education governed by an interlocal cooperation agreement described by KRS 65.210 through 65.300 and formed to make educational programs and services more efficiently and effectively available to boards of education on a multidistrict basis.

(4) "Unpaid leave" means leave time without pay beginning the first day of the month following an employees' last paid working day.]

Section 2. Group health coverage shall consist of a single contract or the single contract dollar equivalent applied to any alternate

plans of coverage contained in the master contracts between the Commonwealth and the carriers.

Section 3. Group life insurance coverage shall consist of benefit amounts as specified in the master contract between the Commonwealth and the carrier.

Section 4. ~~[For the purposes of administration of the group health and life insurance programs for local board employees, the following shall apply:]~~ (1) Regular full-time certified, ~~[and]~~ noncertified, and blended employees shall be eligible ~~[ineligible]~~ for state contribution for health and life insurance premiums unless they are ~~[if]~~ on leave without pay from the local educational agency or interlocal cooperative.

(2) For purposes of administration of the group health and life insurance programs for local school district employees:

(a) Leave without pay shall include unpaid leave, unpaid sick leave, unpaid educational leave, and unpaid leave while receiving Workers' Compensation benefits; and

(b) ~~[.]~~ Unpaid leave shall include the ~~[is defined as]~~ beginning of the first day of the month following an employee's last paid working day.

(3) ~~[(3)]~~ An employee on leave without pay shall not be eligible for state contribution for health and life premiums until the employee has actively returned to work from leave.

(4) ~~[(3)]~~ An employee who has actively returned to work shall be ~~[and is]~~ eligible for state contribution for health and life premiums when he returns to work at least one (1) day of the next consecutive month after being on leave without pay.

Section 5. The extent of eligibility for state contribution for health and life insurance premiums shall be based upon the extent to which a position is funded with state or local (nonfederal) funds.

Section 6. A ~~[Each]~~ local board of education or interlocal educational cooperative shall provide ~~[to]~~ the Department of Education accurate employment data on covered employees on a month-to-month basis ~~[on such forms and such detail as may be specified by the chief state school officer].~~

GENE WILHOIT, Commissioner of Education
 HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: April 2, 2002
 FILED WITH LRC: April 2, 2002 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
 Kentucky Board of Education
 Department of Education
 (As Amended at ARRS, June 11, 2002)

702 KAR 3:300. Approval for school district lease and retirement incentive annuity agreements.

RELATES TO: KRS 65.944, 65.946, 156.070

STATUTORY AUTHORITY: KRS 65.944(1)(c), 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.070 sets forth the Kentucky Board of Education's plenary powers over the management and control of local school districts.]~~ KRS 156.160 and 156.070 give the Kentucky Board of Education the authority to promulgate administrative regulations deemed necessary for the management of the school districts ~~[under its control]~~. KRS 65.944(1)(c) requires the Kentucky Board of Education to promulgate an administrative regulation to implement requirements for lease approval by the Commissioner of Education. This administrative regulation establishes requirements for approval of school district lease and retirement incentive annuities. [This administrative regulation is necessary to implement KRS 65.944, which requires approval of the chief state school officer prior to a school district entering into certain lease agreements and which mandates the promulgation of an administrative regulation.]

Section 1. Administrative Guidelines. (1) To request approval of

a lease or retirement incentive annuity agreement in excess of \$100,000 from the Commissioner of Education [~~chief state school officer~~] pursuant to KRS 65.944(1)(c), the following shall be submitted to the Department of Education, Office of District Support Services [~~Bureau of Management Support Services~~], prior to finalization of the lease or retirement incentive annuity agreement:

- (a) The terms of the lease or retirement incentive annuity, including the lease or retirement incentive annuity price;
- (b) The number of optional renewal periods;
- (c) The interest rate;
- (d) The date of issue;
- (e) The purpose of the lease or retirement incentive annuity; and
- (f) The name of any trustee of paying agent.

(2) [~~At any time~~] During the evaluation process, the Department of Education, Office of District Support Services [~~Bureau of Management Support Services~~], may request additional documentation [~~deemed necessary~~] to properly evaluate the proposed lease or retirement incentive annuity agreement.

Section 2. Technology Leases. Pursuant to KRS 65.946, each school district shall submit to the Department of Education, Office of District Support Services [~~Bureau of Management Support Services~~], each technology lease including evidence of the lease being limited to the three (3) year useful life of the equipment and approval of the district's technology plan.

Section 3. Final Approval and Reconsideration. (1) Final approval of a proposed school district lease or retirement incentive annuity agreement with a lease or retirement incentive annuity price of \$100,000 or more shall [~~may~~] be granted by the Commissioner of Education before the agreement takes effect [~~chief state school officer~~].

(2) Upon receiving approval from the Commissioner of Education [~~Department of Education~~], a school district may enter into the lease or retirement incentive annuity at any time within the current fiscal year. [~~A copy of the executed lease shall be submitted to the chief state school officer within ten (10) days of its execution.~~]

(3)(a) The Commissioner of Education shall send written notification to the school district if the agreement is not approved.

(b) The notice shall contain the reasons the agreement was not approved.

(c) A school district may request reconsideration by the Commissioner of Education [~~chief state school officer~~] if alterations are made to the proposed lease or retirement incentive annuity which alleviate the concerns expressed by the Commissioner of Education [~~Department of Education~~].

Section 4. Superintendent Annuity. This administrative regulation shall not apply to an annuity provision within the negotiated employment contract of a school district superintendent.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: April 2, 2002
FILED WITH LRC: April 2, 2002 at 11 am.

EDUCATION, ARTS, AND HUMANITIES
Kentucky Board of Education
Department of Education
(As Amended at ARRS, June 11, 2002)

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(2) 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 processes 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 annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results [~~them~~] annually to the KBE by October 31;
- (6) Advise the Department of Education of all legal action brought against the KHSAA by October 31;
- (7) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;
- (8) Employ a commissioner and evaluate that person's performance annually by October 31, 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)(a) Conduct field audits of the association's entire membership over a five (5) year period regarding each school's compliance with 20 USC Section 1681 (Title IX) and submit summary reports including the highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested; and
- (b) 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 annually submit the following [~~financial~~] documents to the KBE:

- (a) Draft budget for the next two (2) fiscal years, including the current year; [~~years in November of each year~~]
- (b) End-of-year budget status report for the previous fiscal year;
- (c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
- (d) A summary report of operations including financial, legal and administrative summaries of actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
 - 1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
 - 2. Eligibility rules;
 - 3. Duties of school officials;

- 4. Contests and contest limitations;
- 5. Requirements for officials and coaches; and
- 6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues. ~~f)~~

(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any. ~~(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, and due process procedures ~~(and officials' guidebook)~~ of the KHSAA Handbook, Fall 2002 ~~(October, 2000)~~ shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association Handbook, Fall 2002, as amended ~~(October, 2000)~~", Kentucky High School Athletic Association, is incorporated by reference.

(2) This ~~material (document)~~ ~~[material]~~ may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. to ~~(through)~~ 4:30 p.m.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: March 27, 2002
FILED WITH LRC: April 2, 2002 at 11 a.m.

LABOR CABINET
Department of Workers Claims
(As Amended at ARRS, June 11, 2002)

803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS 342.0011, 342.340, 342.342, 342.345, 342.347 ~~[Chapter 342]~~

STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the commissioner to establish requirements for individual self-insurers. This administrative regulation establishes minimum requirements for an individual employer who self-insures workers' compensation liability.

Section 1. Definitions. (1) "Cessation liability security" means the security covering liability associated with anticipated claims occur-

ring upon cessation of all operations of an individual self-insurer in the state.

(2) "Commissioner" **is defined by KRS 342.0011(9).** ~~[means the Commissioner of the Department of Workers' Claims.]~~

(3) "Employer" means an employer subject to KRS Chapter 342.

(4) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(5) "Service organization" means a person or entity which provides services including claims adjustment, safety engineering, computation of statistics, preparation of loss or tax reports, purchase of excess insurance, or preparation of another required self-insurance report.

(6) "Specific excess insurance" means an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

Section 2. Certification. A person, party, or employer shall not act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the commissioner. A certification issued by the commissioner shall remain in effect on an annual basis, unless otherwise revoked pursuant to Section 11 of this administrative regulation.

Section 3. Application. (1) An initial application for individual self-insurance shall be submitted to the commissioner on form SI-02 and shall include:

(a) The employer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. A subsidiary which is to be covered under the application, or who is already self-insured, shall be identified with the relationship to the applicant described fully;

(b) A statement of the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of employees at each site;

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance shall be received by the commissioner at least five (5) days prior to certification of self-insurance;

(d) A copy of the proposed surety deposit or letter of credit instrument required by Section 5 of this administrative regulation. The surety shall be received by the commissioner prior to certification to self-insure;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs ~~[on form SI-08];~~

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on form SI-01;

(j) An individual or service organization responsible for administration or adjustment of a workers' compensation claim shall provide satisfactory evidence to the commissioner as to the organization's qualifications to administer and adjust a workers' compensation claim; and

(k) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in subsection (4) of this section.

(2) An applicant may perform, if qualified, a function of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents shall be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days

prior to the proposed inception date of self-insurance. Upon receipt of a complete application and all required documents, the commissioner shall approve or reject status as a self-insurer within thirty (30) days.

(4) A contract with a service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the commissioner finding the self-insured employer in default unless a substitute service organization has been procured.

(5) Variation from the requirements of this section, for good cause shown, may be sought by application to the commissioner.

Section 4. Approval. (1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the commissioner shall consider all relevant factors including the following:

(a) The financial strength of the applicant or guarantor;

(b) The excess insurance policy and retention level;

(c) The experience of the service organization;

(d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;

(e) Profit and loss history;

(f) Workers' compensation loss history of the applicant;

(g) The prospect of increased losses by the employer's cessation of operations in Kentucky;

(h) The number of employees and degree of hazard to which employees are exposed;

(i) Safety programs; and

(j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$3,000,000. Variance from this requirement may be granted to a currently certified individual self-insurer who has demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted if the commissioner:

(a) Finds the applicant has complied with all sections of this administrative regulation; and

(b) Is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.

Section 5. Specific Excess Insurance and Surety Requirements.

(1) Specific excess insurance shall be purchased with a coverage limit of at least \$10,000,000 per occurrence.

(2) To be eligible to write specific excess insurance for an individual self-insurer in Kentucky, a casualty insurance company on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000. The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

(3) Each employer who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide primary security in the form of a continuous surety bond on Form SI-03 or by irrevocable letter of credit on form SI-04, in an amount specified by the commissioner, but not less than \$500,000. In fixing the amount of security, the commissioner shall consider all relevant factors including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky. The commissioner may direct that separate cessation liability security be deposited pursuant to Section 8 of this administrative regulation. The amount shall be reviewed and recalculated at the same times as the primary security.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of SI-05 in an amount specified by the commissioner, but not less than \$500,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies.

Section 6. Coverage of Subsidiary or Related Corporations. A corporation having a wholly-owned subsidiary may submit one (1) joint application to the commissioner, if the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) days written notice to the commissioner.

Section 7. Examination and Review of Filings. A certified public accountant or other qualified individual may be employed by the Department of Workers' Claims for the purpose of reviewing and analyzing the annual filings of individual self-insurers, and applicants for self-insurance, and for making recommendations based on that review.

Section 8. Cessation Liability Security. (1) Cessation liability security shall be distinct from the primary security required in Section 5 of this administrative regulation.

(2) Upon cessation of all operations of an individual self-insurer in the state of Kentucky, cessation liability security shall be called for payment of a claim after all other security posted by the individual self-insurer has been exhausted.

(3) Cessation liability security shall be issued in one (1) or more of the following forms:

(a) A surety bond or insurance policy issued by a casualty insurance company qualified pursuant to Section 5 of this administrative regulation;

(b) An escrow account; or

(c) An irrevocable letter of credit.

(4) If an individual self-insurer secures its workers' compensation obligation by obtaining standard workers' compensation insurance or by joining an approved self-insurance group, the commissioner may release the cessation liability security, effective as of the date of the employers acquiring other coverage.

Section 9. Annual filings. (1) An individual self-insured employer shall file with the commissioner on or before 120 days from the end of the self-insured's fiscal year:

(a) The statement of financial condition required by KRS 342.347(2);

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the commissioner, including relevant claim data; and

(c) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in Section 3(4) of this administrative regulation.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the commissioner. [X]

(3) If the annual required filings are not timely made, the self-insurance certificate shall not be renewed.

Section 10. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) If there is a change in majority ownership of a parent company, the individual self-insurer shall notify the commissioner within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) If an employer is added, merged, acquired, or otherwise brought within the self-insurance coverage, the individual self-insured shall notify the commissioner within thirty (30) days and the adequacy of the surety bond shall be reviewed and may be increased accordingly.

(3) If the payroll of the individual self-insurer during a quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the commissioner and the surety bond requirements may be reviewed and the bond shall be increased accordingly.

Section 11. Revocation or Modification of Certification. (1) If the

commissioner receives information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a show cause order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for hearing.

(2) The commissioner may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insurer is operating in:

1. Contravention of its submitted application; or
2. In material violation of this administrative regulation;

(b) The individual self-insurer or parental guarantor no longer has the financial stability to assure its ability to meet its obligations for the payment of workers' compensation benefits; or

(c) The insurer has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity.

(3) If the commissioner revokes an individual self-insurer's certification, the commissioner shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund.

(4) Self-insurance certification may be revoked by the commissioner after issuance of a show cause order setting forth the grounds of revocation and setting a hearing date in not less than ten (10) days. The hearing shall be conducted pursuant to Section 12 of this administrative regulation. During the pendency of a hearing or appeal, the commissioner may utilize the surety deposit provided by the individual self-insurer to make a payment of workers' compensation benefits which is currently due for which a payment is not being made by the individual self-insurer or its service organization.

Section 12. Aggrieved Parties. (1) A person aggrieved by an action of the commissioner may request a hearing by filing a written request with the commissioner setting forth the basis. Upon receipt of a request, the commissioner shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty (30) days after the notice.

(2) No later than thirty (30) days after the termination of the hearing, the commissioner shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The commissioner's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.

(3) The ruling of the commissioner may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 13. ~~[An individual self-insured shall comply with the contractual requirements with a service organization as set forth in Sections 3(4) and 9(1)(c) of this administrative regulation by July 1, 1999.~~

Section 14. ~~Incorporation by Reference.~~ (1) The following material is incorporated by reference:

- (a) Form S1-01 (December, 1999 ~~[March 15, 1995]~~ edition);
- (b) Form S1-02 (January, 2000 ~~[March 15, 1995]~~ edition);
- (c) Form S1-03 (July, 2000 ~~[March 15, 1995]~~ edition);
- (d) Form S1-04 (June, 2000 ~~[March 15, 1995]~~ edition); and
- (e) Form S1-05 (June, 2000 ~~[March 15, 1995]~~); and
- (f) ~~Form S1-08 (October 1998 edition).~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY GREATHOUSE, Commissioner
 APPROVED BY AGENCY: March 28, 2002
 FILED WITH LRC: April 1, 2002 at 4 p.m.

LABOR CABINET
 Department of Workers Claims
 (As Amended at ARRS, June 11, 2002)

803 KAR 25:026. Group self-insurers.

RELATES TO: KRS 342.0011(7), 342.340, 342.345, 342.347, 342.350 ~~[Chapter 342]~~

STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345, 342.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) 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 to implement the provisions of KRS Chapter 342. KRS 342.340, 342.345 and 342.350 require the commissioner to establish requirements for group self-insurers. This administrative regulation establishes the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability.

Section 1. Definitions. (1) "Administrator" means an individual or legal entity engaged by a group self-insurance fund board of trustees to carry out the policies established by the group self-insurance fund's board of trustees and provide day-to-day management of the self-insurance fund.

(2) "Aggregate excess insurance" means an insurance policy written on a claims incurred basis which insures claims to a stated limit in excess of a specified percentage of the earned premium.

(3) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the state of Kentucky for at least two (2) years prior to its sponsorship of a group self-insurance fund.

(4) "Commissioner" is defined by KRS 342.0011(9). ~~[means the Commissioner of the Department of Workers' Claims.]~~

(5) "Common interests" means that employers are engaged in similar activities, share common standard industrial classification codes and common risk factors.

(6) "Dividends" mean disbursements from surplus funds to group members pursuant to a plan filed with the commissioner.

(7) "Earned premium" means the pro rated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.

(8) "Fiscal agent" means a person, or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest and disburse the self-insurance group's funds.

(9) "Group members" means employers who have joined a group self-insurance fund.

(10) "Group self-insurance fund" means the total contractual arrangement whereby eleven (11) or more employers or two (2) or more city, county, municipal or urban-county employers or their agencies associate to jointly self-insure their workers' compensation liability.

(11) "Insolvent" or "insolvency" means the inability of a group self-insurance fund to pay its outstanding lawful obligations as they mature in the regular course of business, or which holds insufficient assets to prospectively pay all incurred workers' compensation benefits when due.

(12) "Loss fund" means the total amount of the group self-insurance fund's retained liability for claims against the group members.

(13) "Premium" means the amount of money charged each member to fund the obligations and expenses of the group self-insurance fund.

(14) "Qualified actuary" means a member or fellow of the Casualty Actuarial Society.

(15) "Service organization" means a person or entity which provides services which include claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports, or other required self-insurance reports, administration of the fund, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, or legal assistance.

(16) "Specific excess insurance" means an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

(17) "Surplus funds" means the excess of the group self-insurer's assets over its liabilities.

(18) "Trustees" means persons elected by the group members or appointed by the board of directors of the sponsoring trade association or association of governmental entities to oversee the administration of the group self-insurance fund.

Section 2. Certification. Except for an activity arising in the creation of a group self-insurance fund, a person or entity shall not issue a binder or certificate of insurance for workers' compensation coverage unless the group self-insurance fund has been certified to do so by the commissioner. A certification issued by the commissioner shall remain in effect until revoked or modified by the commissioner pursuant to Section 11 of this administrative regulation.

Section 3. Initial Application. (1) An application for certification as a workers' compensation group self-insurance fund shall be filed on form SI-06 with the commissioner by:

(a) A group of eleven (11) or more employers having common interests or membership in a bona fide trade association. Any group members having more than fifty (50) percent common ownership shall constitute one (1) group member; or

(b) Two (2) or more city, county, municipal or urban-county employers or their agencies.

(2) Each initial application **submitted under subsection (1) of this section** shall set forth or be accompanied by:

(a) The fund's name, location of principal office, date of organization, name and address of each member, and the dates of the fiscal year for accounting purposes;

(b) A description of the group members' common interest or a description of the bona fide trade association including date of organization, articles of incorporation, and a history of the association's activities;

(c) A copy of the articles of association, articles of incorporation, trust agreement or bylaws of the proposed group self-insured fund. The group self-insurance fund's enabling documents shall describe the time and methodology by which premiums shall be determined, assessed and collected during regular operations and in the event of insolvency of the group self-insurance fund;

(d) The managed care and utilization review plans, if any, for the group self-insurance fund;

(e) A copy of each instrument by which the applicant or its agent has made a commitment to pay for a past or future good or service;

(f) An executed copy of the indemnity agreement by which group members jointly and severally bind themselves to pay their workers' compensation liability;

(g) Identification by name, address, and term of the initial board of trustees, administrator, and service organization together with a statement that a pecuniary or personal conflict does not exist between the official duties of the trustees, administrators and service organizations and the interests of the members;

(h) The name of the custodian and the address where the group self-insurance fund's books and records will be kept;

(i) Specimen of the proposed policy and certificate of insurance for the specific and aggregate excess coverage;

(j) Copies of surety deposits and fidelity bonds as required by Section 10 of this administrative regulation;

(k) A proposed schedule of premium rates and the plan by which rates will be modified. If employment classifications are to vary from those utilized by the National Council on Compensation Insurance, a description of each classification shall be presented;

(l) A schedule of projected annual premiums and expenses; and

(m) Financial statements for initial group members prepared by a certified public accountant and signed by an owner or officer of each member demonstrating a combined net worth of no less than \$5,000,000 for the group and the financial stability of each member.

(3)(a) Except as provided in paragraph (b) of this section, [(2)] the premium of one (1) group member shall not exceed forty (40) percent of the estimated total premium for the group self-insurance fund.

(b) If the group consists of two (2) city, county, municipal, or urban-county employers or their agencies, the premium of one (1) group member shall not exceed sixty (60) percent of the estimated total premium for the group self-insurance fund.

(4) [(3)] The first year's premium for the initial membership of the group self-insurance fund shall not be less than \$750,000. Verification shall be presented that twenty-five (25) percent of the initial estimated premium has been paid and deposited with the group's fiscal agent.

(5) [(4)] The initial application shall be filed no later than sixty (60) days prior to the proposed inception date of the group self-insurance fund.

(6) [(5)] Certification as a group self-insurance fund shall be granted if the commissioner finds the following:

(a) The applicant has complied with all requirements of this administrative regulation;

(b) The persons responsible for the affairs of the group self-insurance fund are financially stable, competent and experienced in the administration of workers' compensation self-insurance; and

(c) The proposed group self-insurance fund has demonstrated the ability to meet all of its obligations.

(7) [(6)] Before granting certification, the commissioner shall consider the following:

(a) The adequacy of the funding mechanisms;

(b) The presence of excess insurance;

(c) The financial strength of the participating members;

(d) The stability of the membership; and

(e) The risks of the industry.

Section 4. Annual Filing. The ~~following~~ information and reports **required by this section** shall be filed by the group self-insurance fund with the commissioner on an annual basis. ~~[(1)]~~

(1) Within thirty (30) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file:

(a) Copies of all fidelity and surety bonds or surety deposits;

(b) A current listing of the group members of the fund;

(c) A schedule of proposed premiums by employment classifications;

(d) A material change in administration or the service organization;

(e) A plan by which premiums shall be determined, assessed, and collected if there is an insolvency or liquidation of the group self-insurance fund, unless a plan has been previously submitted; and

(f) A statement relating to conflicts as described in Section 3**(2)** ~~[(4)]~~(g) of this administrative regulation.

(2) Within ten (10) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file proof of excess insurance coverage for the ensuing year.

(3) Within 120 days from the end of the group self-insurer's fiscal year, **the group self-insurance fund shall file** the statement of financial condition required by KRS 342.347**(2)** and any other relevant financial information requested by the commissioner.

(4) If the statement of financial condition reveals a fund deficit or inadequate reserves, the trustees shall prepare and file a plan of remedial action within thirty (30) days of the receipt of the statement of financial condition.

(5) Within 150 days after the end of each self-insurance year, **the group self-insurance fund shall file** a statement setting forth all premiums, losses, expenses and distributions for the group self-insurance fund. The trustees shall furnish a copy of this statement to the group members.

Section 5. Withdrawals and Terminations. (1) A member may withdraw from a group self-insurance fund upon sixty (60) days notice to the commissioner and the trustees.

(2) If a group self-insurance fund determines to terminate its self-insurance program, the trustees:

(a) Shall give thirty (30) days advance written notice by certified mail to the commissioner and each group member;

(b) Shall not pay dividends without the written approval of the commissioner for five (5) years following the close of the last year in which it operated; and

(c) Shall demonstrate to the commissioner that satisfactory arrangements have been made for the continued payment and serv-

icing of all outstanding claims.

Section 6. Trustees; Duties. (1) The Board of Trustees of the group self-insurance fund shall consist of between three (3) and eleven (11) persons, who shall not:

(a) Be an owner, officer, employee or agent of a service organization; or

(b) Have a direct or indirect pecuniary interest in a service organization.

(2) The trustees on behalf of the group members shall be responsible for the following:

(a) Administration of the group self-insurance fund;

(b) The assessment and collection of premium;

(c) Disbursements from the group self-insurance fund; and

(d) Investment of the fund's monies.

(3) The trustees may contract with a service organization, an administrator, or a fiscal agent to carry out the administration of the group self-insurance fund.

(a) A service organization, its employees and agents shall be duly licensed to perform those functions for which a license is required under Kentucky law.

(b) A contract with a service organization that includes the adjustment or settlement of claims shall include a requirement that the service organization shall adjust to final conclusion each claim that results from an occurrence during the period for which the contract is effective.

(c) A revolving fund of not more than twenty (20) percent of estimated premiums may be established for use by a service [servicing] organization for the payment of claims.

Section 7. Excess Insurance. (1) Except for a group self-insurance fund qualifying under subsection (2) of this section, the trustees shall purchase aggregate excess insurance.

(a) The retained liability and other fixed costs of the fund shall not exceed 100 percent of the annual assessment of the group members, unless the amount over 100 percent is secured by unencumbered surplus funds.

(b) In the computation of the retained liabilities of the group self-insurance fund, reserves for claims or projected reserves for claims may be discounted for their present value, if the discounting is based upon the computation of a qualified actuary.

(c) The limit of liability of the aggregate excess insurance coverage shall not be less than \$2,000,000 or fifty (50) percent of the earned premium, whichever is greater.

(2) A group self-insurance fund meeting all of the following conditions may annually seek a waiver from the commissioner of the requirement to purchase aggregate excess insurance:

(a) The fund has been in continuous operation for at least five (5) years;

(b) The fund's annual premium has exceeded \$5,000,000 in each of the three (3) preceding years; and

(c) Reserves and premium structure have been established so as to secure adequately all predictable losses.

(3) The trustees shall purchase specific excess insurance coverage with a limit of at least \$25,000,000 per occurrence.

(4) To be eligible to write excess liability coverage for group self-insurance funds, a casualty insurance company shall at all times maintain on file with the Commissioner of the Kentucky Department of Insurance [Kentucky Insurance Commissioner] financial statements demonstrating assets, including surplus to policyholders, at least equal to the Department of Insurance [Department] requirements of a carrier to do business in the state. The latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000 and the carrier shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over a long period of time.

Section 8. Fund Balances. (1) Prior to inception of each group member's self-insurance year, the trustees shall collect from that member at least twenty-five (25) percent of the estimated premium for the ensuing year. The balance of the estimated premium shall be collected in either quarterly or monthly installments. Each group member's payroll shall be audited and an adjustment to premium shall be made accordingly.

(2) A disbursement from the fund shall be for a purpose related to the group self-insurance fund. A dividend shall not be paid until at least twenty-four (24) months after the expiration of the self-insurance year and shall be paid from surplus funds not required for payment of claims or other liabilities. The dividends shall be paid or credited to members according to the reasonable classifications as the directors may establish. A dividend shall not be paid which unfairly discriminates between members of the same classifications.

(3) The formula to be used for collection of assessments and for the distribution of dividends shall be determined by the trustees and approved by the commissioner. A dividend plan shall specify whether past fund members are eligible for the dividend.

(4)(a) A trustee, fiscal agent or service organization shall not utilize an asset of the group self-insurance fund for a purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.

(b) The trustees may invest surplus funds or reserves not needed for current obligations in:

1.a. U.S. government bonds, U.S. Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government and its agencies;

b. Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor;

c. Obligations issued by a county, district, municipality or other legal authority within Kentucky with a minimum rating of "AA" by Standard & Poor;

d. Investment share accounts in a savings and loan association in Kentucky whose deposits are insured by a federal agency; or

e. Certificates of deposit if issued by a duly chartered commercial bank in Kentucky; []

2. Individual equity securities actively traded on the New York or NASDAQ Stock Exchanges with no individual equity holding comprising greater than ten (10) percent of the equity portion of the portfolio at the time of purchase.

a. An investment in an individual equity holding shall not represent at the time of purchase more than five (5) percent of the total market value of the security.

b. Investments in equity securities shall not exceed twenty (20) percent of the total market value of the investment portfolio of the self-insurance group at the time of purchase;

3. Corporate bonds if:

a. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;

b. The corporate bond investments do not exceed fifteen (15) percent of the total market value of the investment portfolio at the time of purchase; and

c. The bond has a minimum rating of "A" by Standard and Poor; or

4. Mutual funds that are registered investment advisors licensed by the Security and Exchange Commission and Commonwealth of Kentucky to perform investment services. Investments in mutual funds shall not exceed twenty (20) percent of the total market value of the investment portfolio at the time of purchase. []

(c) Of the aggregate investments made by the self-insurance group under paragraph (a) or (b) of this subsection:

1. Not less than seventy-five (75) percent of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities described in paragraph (b)† of this subsection; and

2. A minimum of fifteen (15) percent of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or U.S. Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.

(d) ~~A group self-insurance fund shall have six (6) months from the effective date of this administrative regulation to restructure investments to conform to the requirements of this section.~~ Variation from the requirements of this section for good cause shown may be sought by application to the commissioner.

Section 9. Group Members. (1) The trustees shall not accept as a member of the group, an employer that does not have a net worth

of at least two (2) times its estimated annual premium, unless the employer pays its full estimated annual premium in advance. The trustees shall not accept as a member of the group an employer that does not meet all other qualifications for being a member of the group as set forth in the bylaws of the group.

(2) At the discretion of the trustees, the group self-insurance fund may include the Kentucky employees of foreign (out-of-state) employers.

(3) The trustees may suspend or expel a member from the group due to adverse claims experience or lack of cooperation with safety and loss prevention policies by giving the member and the commissioner thirty (30) days advance written notice.

(4) The trustees shall report to the commissioner an attempt by a person as defined in KRS 342.0011 who knowingly, as defined in KRS 501.020, makes a false representation, including misrepresentation of a hazard, classification, payroll, or other fact of an employer or its agent that is designed to cause a reduction in the employer's premium. The trustees shall secure from each member an agreement to report payroll in accordance with the rules and rating plan of the fund. Willful failure to properly report in accordance with the rules and rating plan shall be grounds for expulsion pursuant to subsection (3) of this section.

(5) At least thirty (30) days prior to due date, the trustees shall notify each group member of all premium due, including adjustments. Failure by a member to pay the premium due prior to the due date may result in immediate suspension or expulsion from the group by the trustees. Ten (10) days advance written notice shall be given to the member and the commissioner.

(6) The group self-insurance fund shall be considered as an individual employer for all purposes of taxation and the individual members of the group shall not be exposed to tax liability other than liability existing as a result of the indemnity agreement with the other group members and the group self-insurance fund.

Section 10. Bonds. (1) The trustees and fund administrators shall provide a fidelity bond to the commissioner in the amount of not less than \$300,000, which may be subject to a deductible not exceeding \$10,000 for each trustee, each fund administrator and the administrator's employees.

(2) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty (50) percent or \$1,000,000, whichever is lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(3) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(4) In lieu of the bonds required under subsections (1), (2) and (3) of this section, the trustees may secure a fidelity blanket bond in an amount not less than fifty (50) percent of the self-insurance fund or \$2,000,000, whichever is lower. The fidelity blanket bond shall include the trustees, the administrator, the service organization, personnel of the service organization and the fiscal agent, unless the fiscal agent is a national bank.

(5) The fund shall provide surety to the commissioner on form SI-03 in an amount no less than \$250,000, ten (10) percent of the annual premium or ten (10) percent of the reserve requirement as established in the most recent certified statement of financial condition on file with the commissioner, whichever is greater.

(6) A corporate surety, to be eligible for writing group self-insurance fund bonds in the state of Kentucky, shall be authorized by the **Commissioner of the Kentucky Department of Insurance** [Commissioner] to transact business in the state, and its latest financial statement on file with the insurance commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest **Department of Insurance** [Department] requirements for admission of a new company to do business in the state. On its latest financial statement, the corporate surety shall reflect a minimum policyholder surplus of not less than \$25,000,000. The corporate surety shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over a long period of time. A surety shall not expose itself to a loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(7) The trustees may file a cash or cash equivalent security deposit on form SI-05 or bank letter of credit on form SI-04 in satis-

faction of the surety requirement.

Section 11. Revocation or Modification of Certification. (1) The commissioner may revoke or direct remedial actions regarding a group's certification as a group self-insurance fund if he finds any of the following conditions exist:

(a) The group self-insurance fund is operating significantly in contravention of the basic organizing documents of the group self-insurance fund or is in material violation of this administrative regulation or KRS Chapter 342;

(b) The group self-insurance fund is no longer financially responsible and may reasonably be expected to be unable to meet its current obligation to participants or employees of participants for the payment of workers' compensation medical and indemnity benefits; or

(c) There has been a significant and adverse change in the administration of the group self-insurance fund.

(2) If the commissioner revokes a group self-insurance fund's certification, the commissioner shall immediately notify the Kentucky group self-insurer's guaranty fund.

(3) A group self-insurance fund's certification may be revoked or made subject to remedial action after compliance with the following procedures:

(a) The commissioner shall conduct a hearing upon a written application by a person or group aggrieved by an order of the commissioner or on his own volition. Written request for a hearing shall be filed within thirty (30) days after an order by the commissioner. The application for hearing shall briefly state the grounds on which the aggrieved party is relying and a basis for the relief sought. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, stating the date, time and place for the hearing, and specify the matters to be considered.

(b) The commissioner, during the pendency of an appeal or request for hearing, may utilize the surety deposit provided by the group self-insurance fund to make a payment of workers' compensation benefits which is currently due.

(c) A hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(d) The final order issued by the commissioner may revoke or modify a group self-insurance fund's certification.

(4) The group self-insurer may appeal the ruling of the commissioner to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) SI-03 (July, 2000 [March 15, 1995] edition);

(b) SI-04 (June, 2000 [March 15, 1995] edition);

(c) SI-05 (June, 2000 [March 15, 1995] edition); and

(d) SI-06 (July, 2001 [2000] [March 15, 1995] edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m.

LARRY GREATHOUSE, Commissioner

APPROVED BY AGENCY: March 28, 2002

FILED WITH LRC: April 1, 2002 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, June 11, 2002)

806 KAR 17:081. Minimum standards for long-term care insurance policies.

RELATES TO: KRS 304.12-020, 304.14-120(2), 304.14-600 to 304.14-625, 304.18-110, 304.18-120, 304.18-127, 304.29-600, 304.32-290, 304.38-220, 26 USC 7702B, 42 USC 1395x(r)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-615, 304.14-620, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes ~~[provides that]~~ the Commissioner of Insurance to promulgate ~~[may make reasonable]~~ administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. **KRS 304.14-615(1) requires the Commissioner of Insurance to promulgate administrative regulations establishing minimum standards for the manner, content, and sale of long-term care insurance policies.** KRS 304.14-620 requires the Commissioner of Insurance to ~~promulgate [make]~~ administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 authorizes ~~[provides that]~~ the Commissioner of Insurance to ~~[may]~~ promulgate reasonable administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 authorizes ~~[provides that]~~ the Commissioner of Insurance to ~~[may]~~ promulgate reasonable administrative regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for long-term care insurance.

Section 1. Definitions. (1) "Applicant" is defined in KRS 304.14-600(2). ~~[means:~~

~~(a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and~~

~~(b) In the case of a group long-term care insurance policy, the proposed certificate holder.]~~

(2) "Attained age rating" means a schedule of premiums starting from the issue date which increases age at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).

(3) "Certificate" is defined in KRS 304.14-600(3). ~~[means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in Kentucky.]~~

(4) ~~[(3)(a)]~~ "Chronically-ill individual", pursuant to 26 USC 7702B(c)(2), means any individual who has been certified by a licensed health care practitioner within the preceding twelve (12) month period as:

(a) ~~[4.]~~ Being unable to perform (without substantial assistance from another individual) at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or

(b) ~~[2.]~~ Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

~~[(b) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12) month period a licensed health care practitioner has certified that the individual meets these requirements.]~~

(5) ~~[(4)]~~ "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(6) ~~[(5)]~~ "Cold lead advertising" means making use ~~[directly or indirectly]~~ of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(7) ~~[(6)]~~ "Commissioner" is defined in KRS 304.1-050(1).

(8) ~~[(7)] [(4)]~~ "Commissioner" means the Commissioner of the Kentucky Department of Insurance;

(2) "Insurer" means insurer, fraternal benefit society, nonprofit hospital, medical surgical, dental, and health service corporation, and health maintenance organization; and

(3) "Compensation" [as referred to in Section 22 of this administrative regulation] means pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of long-term care insurance policies or certificates, such as bonuses, gifts, prizes, awards, and finders' fees.

(9) ~~[(8)]~~ "Denied claim" means the insurer refuses to pay a claim for any reason ~~except [other than for claims not paid]~~ for failure to meet the waiting period or because of an applicable preexisting condition.

(10) ~~[(9)] [(5)]~~ "Exceptional increase" means a premium rate

increase filed by an insurer as exceptional for which the commissioner determines the need for the premium rate increase is justified:

(a) Due to changes in laws or administrative regulations applicable to long-term care coverage in this state; or

(b) Due to increased and unexpected utilization that affects the majority of insurers of similar products.

(11) ~~[(10)] [(6)]~~ "Group long-term care insurance" is defined in KRS 304.14-600(4).

(12) ~~[(11)]~~ "High pressure tactics" means employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(13) ~~[(12)] [(7)]~~ "Incidental" means that the value of the long-term care benefits provided is less than ten (10) percent of the total value of the benefits provided over the life of the policy measured as of the date of issue.

(14) ~~[(13)]~~ "Individually-identifiable health information" is defined in 45 CFR 164.501.

(15) ~~[(14)] [(8)]~~ "Insurer" means an entity authorized to issue long-term care insurance in Kentucky.

(16) ~~[(15)]~~ "Licensed health care practitioner" means a physician, as defined in 42 USC 1395x(r), a registered professional nurse, licensed social worker, or other individual who meets 26 USC 7702B(b)(4) ~~[the requirements prescribed by the Secretary of the Treasury].~~

(17) "Long-term care benefits classifications" means:

(a) Institutional long-term care benefits only;

(b) Noninstitutional long-term care benefits only; or

(c) Comprehensive long-term care benefits.

(18) ~~[(16)] [(9)]~~ "Long-term care insurance" is defined in KRS 304.14-600(1).

(19) ~~[(17)]~~ "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically-ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(20) ~~[(18)]~~ "Managed-care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

(21) ~~[(19)]~~ "Misrepresentation" means misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(22) ~~[(20)]~~ "Policy" is defined in KRS 304.14-600(5).

(23) ~~[(21)] [(10)]~~ "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(24) ~~[(22)] [(11)] (a)]~~ "Qualified long-term care insurance contract" or "federally-tax-qualified long-term care insurance contract" means:

(a) An individual or group insurance contract that meets the requirements of 26 USC 7702B(b) as follows:

1. The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

2. The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, 42 USC 1395 et seq., or would be so reimbursable ~~except [but]~~ for the application of a deductible or coinsurance amount. The requirements of this subparagraph shall ~~[do]~~ not apply to expenses that are reimbursable under 42 USC 1395 et seq. ~~[Title XVIII of the Social Security Act]~~ only as a secondary payor. A contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

3. The contract is guaranteed renewable, within the meaning of 26 USC 7702B(b)(1)(c);

4. The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in subparagraph 5 of this paragraph;

5. All refunds of premiums, and all policyholder dividends or similar amounts, under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of death of the insured or a complete surrender or cancellation of the contract shall not ~~exceed~~ exceed the aggregate premiums paid under the contract; and

6. The contract meets the consumer protection provisions set forth in 26 USC 7702B(g); or ~~[-]~~

~~(b) ["Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" also means] The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of 26 USC 7702B(b) and (e).~~

~~(25) [(23)] "Qualified long-term care services" means services that meet the requirements of 26 USC 7702B(c)(1) as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically-ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.~~

~~(26) [(24)] [(42)] "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. [(a)] Certificates of groups that meet the definition in KRS 304.14-600(4) shall not be [are not] considered similar to certificates or policies otherwise issued as long-term care insurance, except they shall be considered [but are] similar to other comparable group certificates with the same long-term care benefit classifications.~~

~~(b) For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows:~~

- ~~1. Institutional long-term care benefits only;~~
- ~~2. Noninstitutional long-term care benefits only; or~~
- ~~3. Comprehensive long-term care benefits.~~

~~(27) [(25)] "Twisting" means knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.~~

Section 2. Policy Definitions. A long-term care insurance policy [policies] delivered or issued for delivery in Kentucky shall not use the terms set forth below unless the terms are defined in the policy and the definitions satisfy the following requirements:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring. ~~["Adult day care" means a program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.]~~

(2) "Acute condition" means that the individual is medically unstable. The individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his health status.

(3) "Adult day care" means a program for four (4) or more individuals, of social- or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath, or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgement as it relates to safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function, or, if ~~[when]~~ unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

(10) "Home health-care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. ~~The [Such] services may include homemaker services, assistance with activities of daily living, and respite care services.~~

(11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(12) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care", "intermediate care", "personal care", "home care", and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care shall ~~[must]~~ be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of bed, chair, or wheelchair.

(17) All providers of services, including but not limited to "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency", shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified. ~~["Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.~~

~~(4) "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.~~

~~(5) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.~~

~~(6) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living (such as bathing, eating, dressing, transferring, and toileting).~~

~~(7) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.~~

~~(8) All providers of services, such as "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.]~~

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.

(a) A long-term care insurance policy [policies] issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only if ~~when~~ the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and if ~~when~~ the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only if ~~when~~ the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may only be used if ~~when~~ the insurer does not have the right to change the premium.

(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of 26 USC 7702B ~~[7702B]~~(b)(1)(C).

(2) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(a) Preexisting conditions or diseases in accordance with KRS 304.14-615(3)(d):

(b) Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;

(c) Alcoholism and drug addiction;

(d) Illness, treatment, or medical condition arising out of:

1. War or act of war (whether declared or undeclared);

2. Participation in a felony, riot, or insurrection;

3. Service in the armed forces or auxiliary units;

4. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

5. Aviation (this exclusion shall apply [applies] only to nonfare-paying passengers); ~~;~~

(e) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

~~(f) If [Expenses for services or items available or paid under another long-term care insurance or health insurance policy; and~~

~~(g) [In the case of] a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under 42 USC 1395 et seq. [Title XVIII of the Social Security Act] or would be so reimbursable except [but] for the application of a deductible or coinsurance amount; and ~~;~~~~

~~(g) [(h)] This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.~~

~~[(f) The requirements of this subsection are not intended to prohibit exclusions and limitations by type of provider or territorial limitations.]~~

(3) Extension of benefits.

(a) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination.

(b) The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits, and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance issued in Kentucky on or after the effective date of this administrative regulation ~~[policies]~~ shall provide a covered individual with a basis for continuation or ~~[and]~~ conversion of coverage:

(a) A policy provision shall provide for continued coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.

1. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the

benefits of the existing group policy; and

2. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(b) A policy provision shall provide that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced) ~~for at least six (6) months immediately prior to termination,~~ shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

1. A converted policy shall be an individual policy of long-term care insurance that provides benefits identical to or benefits determined by the commissioner to be substantially similar ~~[equivalent]~~ to or in excess of those provided under the group policy from which conversion is made.

2. If the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to the substantial similarity ~~[equivalency]~~ of benefits, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(c) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after the notice of the right to conversion health insurance is given by the insurer, pursuant to KRS 304.18-110(9) ~~[termination of coverage under the group policy].~~

(d) A converted policy shall be issued effective on the date of ~~[day following the]~~ termination of coverage under the group policy, and shall be renewable annually.

(e) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If ~~[where]~~ the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(f) Continuation of coverage or issuance of a converted policy shall be mandatory, except if ~~[where]~~:

1. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

2. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

a. Providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

b. The premium for which is calculated in a manner consistent with the requirements of paragraph (e) of this subsection.

(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision~~;~~

~~;~~ that results in a reduction of benefits payable if:

1. The benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses; and

2. ~~[The provision shall only be included in the converted policy]~~ The converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) A converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed

those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(i) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon his relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

~~[(j) For the purpose of this section, a "managed care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.] [as required by KRS 304.18-110 and 304.18-120.]~~

(5) Discontinuance and replacement.

(a) If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination ~~[in accordance with KRS 304.18-127].~~

~~(b) [(6)] Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:~~

~~1. [(a)] Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and~~

~~2. [(b)] Vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.~~

~~(6) [(7)](a) The premium [The premiums] charged to an insured for long-term care insurance shall not increase due to either:~~

~~1. [(a)] The increasing age of the insured at ages beyond sixty-five (65); or~~

~~2. [(b)] The duration the insured has been covered under the policy.~~

~~(b) The purchase of additional coverage shall not be considered a premium rate increase, except [but] for [purpose of] the calculation required under Section 22 of this administrative regulation, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.~~

~~(c) A reduction in benefits shall not be considered a premium change, except [but] for [purpose of] the calculation required under Section 22 of this administrative regulation, the initial annual premium shall be based on the reduced benefits.~~

~~(7) [(8)] Electronic enrollment for group policies.~~

~~(a) A requirement that a signature of a group long-term care insurance insured be obtained by an agent or insurer [insured] shall be deemed satisfied if:~~

~~1. The consent is obtained by a telephonic or electronic enrollment by the group policyholder or insurer;~~

~~2. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records; and~~

~~3. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually-identifiable health information is maintained.~~

~~(b) A verification of enrollment information shall be provided to the enrollee.~~

~~(c) An insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.~~

Section 4. Unintentional Lapse. An insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination.

1. An ~~[No]~~ individual long-term care policy or certificate shall not be issued until the insurer has received from the applicant either a written:

a. Designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

b. Waiver, dated and signed by the applicant, electing not to designate additional persons to receive notice.

2. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured.

3. The form used for the written designation shall ~~[must]~~ provide

space clearly designated for listing at least one (1) person.

4. The designation shall include each person's full name and home address.

5. If an applicant elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one (1) person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

6. The insurer shall notify the insured of the right to change a written designation, no less often than once every two (2) years.

~~(b)1. If [When] a policy holder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements of paragraph (a) of this subsection shall not need to [need not] be met until sixty (60) days after the policyholder or certificate holder is no longer on the [such a] payment plan.~~

2. The application or enrollment form for the ~~[such]~~ policies or certificates shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium.

1. An ~~[No]~~ individual long-term care policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to paragraph (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination.

2. Notice shall:

a. Be given by first class United States mail, postage prepaid;

b. Not be given until thirty (30) days after a premium is due and unpaid; and

c. Be deemed to have been given as of five (5) days after the date of mailing.

(2) Reinstatement. In addition to the requirement in subsection (1) of this section, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, if lapse occurs ~~[in the event of lapse]~~, if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(a) This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, if ~~[where]~~ appropriate.

(b) The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

Section 5. ~~[4.]~~ Required Disclosure Provisions. (1) Renewability.

(a) Individual long-term care insurance policies shall contain a renewability provision:

(b) The provision shall:

1. Be appropriately captioned;

2. Appear on the first page of the policy; and

3. State clearly that the coverage is guaranteed renewable or noncancellable ~~[the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed].~~

(c) This subsection shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(d) A long-term care insurance policy or certificate, other than one (1) in which ~~[where]~~ the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or

coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, a rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) If ~~[Where]~~ a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of these terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in KRS 304.14-615(4)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of tax consequences.

(a) A disclosure statement shall be required, as specified in paragraphs (b), (c) and (d) of this subsection, for life insurance policies which provide benefits which are accelerated ~~[an accelerated benefit]~~ for long-term care.

(b) The disclosure statement shall be required both at the time:

1. Of application for the policy or rider; and
2. The ~~[accelerated]~~ benefit payment request is submitted.

(c) The statement shall disclose that:

1. Receipt of the ~~[accelerated]~~ benefits may be taxable; and
2. Assistance should be sought from a personal tax advisor.

(d) The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

(e) This subsection shall not apply to qualified long-term care insurance contracts.

(7) Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits".

(a) Any additional benefit triggers shall also be explained in this section of the policy or certificate.

(b) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.

(c) If an attending physician or other specified person must certify a certain level of functional dependency in order to determine eligibility for benefits, this too shall be specified.

(8) A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is intended to be a qualified long-term care insurance contract under 29 USC 7702B(b).

(9) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is not intended to be a qualified long-term care insurance contract.

Section 6. Required Disclosure of Rating Practices to Consumers. (1) Except as provided in subsection (2) of this section, this section shall apply ~~[applies]~~ to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.

(2) For a certificate issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative

regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.

(3) ~~Except for [Other than]~~ a policy for which no applicable premium rate or rate schedule increases can be made, an insurer shall provide all of the information listed in this subsection to the applicant ~~when [at the time of]~~ application or enrollment occurs, unless the method of application does not allow for delivery at that time:

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions, and the policyholder's or certificate holder's option if a premium rate is revised; ~~[in the event of a premium rate revision;]~~

(c) The premium rate or rate schedules applicable to the applicant that will ~~[shall]~~ be in effect until a request is made for an increase;

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

1. A description of when premium rate or rate schedule adjustments will be effective, **such as the next anniversary date or next billing date** ~~[(e.g., next anniversary date, next billing date, etc.)];~~ and

2. The right to a revised premium rate or rate schedule as provided in subsection (2) of this section if the premium rate or rate schedule is changed; and

(e) 1. Information regarding each premium rate increase on the **current [this]** policy form or similar policy forms over the past ten (10) years for Kentucky or any other state that, at a minimum, shall identify ~~[identifies]~~:

a. The policy forms for which premium rates have been increased;

b. The calendar years when the form was available for purchase; and

c. The amount or percent of each increase. ~~[(4)]~~ The percentage may be expressed as:

(i) A percentage of the premium rate prior to the increase; or ~~[and] [or]~~

(ii) ~~[May also be expressed as]~~ Minimum and maximum percentages if the rate increase is variable by rating characteristics.

2. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

3. An insurer may exclude from the disclosure premium rate increases that occurred prior to the acquisition of and that only apply to:

a. Blocks of business acquired from other nonaffiliated insurers; or

b. The long-term care policies acquired from other nonaffiliated insurers.

4. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers and if ~~[when]~~ those increases occurred prior to the acquisition on or before the later of the effective date of this administrative regulation or the end of a twenty-four (24) month period following the acquisition of the block of business or policies, the acquiring insurer may exclude that rate increase from the disclosure.

a. The rate increase that may be excluded pursuant to this subparagraph shall be disclosed by the nonaffiliated selling company in accordance with subparagraph 1 of this paragraph.

b. If the acquiring insurer files for a subsequent rate increase, even within the twenty-four (24) month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by this paragraph, including disclosure of the earlier rate increase.

(4) If the method of application does not allow for delivery ~~when [at the time of]~~ application or enrollment occurs, the information listed in subsection (3) of this section shall be delivered to the applicant no later than ~~when [at the time of delivery of]~~ the policy or certificate is delivered.

(5) An applicant shall sign an acknowledgement ~~when [at the time of]~~ application occurs, unless the method of application does not allow signature at that time, that the insurer made the disclosure

required under subsection (3)(a) and (e) of this section.

~~(6) If the method of application does not allow signature when application occurs [due to the method of application, the applicant cannot sign an acknowledgement at the time of application] in accordance with subsection (5) of this section, the applicant shall sign an acknowledgement no later than when [at the time of delivery of] the policy or certificate is delivered.~~

~~(7) An insurer shall use forms HIPMC-LTC-1 (09/01) and HIPMC-LTC-2 (09/01), incorporated by reference in this administrative regulation, to comply with the requirements of subsections [4] through (3) and (5) of this section.~~

~~(8) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer.~~

~~(9) The notice required, pursuant to subsection (8) of this section, shall include the information required by subsection (3) of this section when the rate increase is implemented.~~

Section 7. Initial Filing Requirements. (1) This section shall apply [applies] to any long-term care policy issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.

(2) An insurer shall provide the information listed in this subsection to the commissioner in accordance with the time period set forth in KRS 304.14-120(2): [.]

(a) A copy of the disclosure documents required in Section 6 of this administrative regulation; and

(b) An actuarial certification consisting of at least the following:

1. A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately-adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

2. A statement that the policy design and coverage provided have been reviewed and taken into consideration;

3. A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

4. A complete description of the basis for contract reserves that are anticipated to be held under the form, including [to include]:

a. Sufficient detail or sample calculations to depict completely [provided so as to have a complete depiction of] the reserve amounts to be held;

b. A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

c. A statement that the net valuation premium for renewal years does not increase, except for attained-age rating if [where] permitted; and

d. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if the [such a] statement cannot be made, a complete description of the situations in which [where] this does not occur.

(i) An aggregate distribution of anticipated issues may be used if [as long as] the underlying gross premiums maintain a reasonably-consistent relationship;

(ii) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under subsection (3) of this section based on a standard age distribution; and

5.a. A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums which shall include [either] premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and creditable data from other studies, or both.

Section 8. [5.] Prohibition Against Postclaims Underwriting. (1)

Applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Except for policies or certificates which are guaranteed issue:

(a) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: "Caution: If your answers on this application, to the best of your knowledge and belief, [for long-term care benefits] are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy."

(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate when it is delivered [at the time of delivery]: "Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:

1. A report of a physical examination;
2. An assessment of functional capacity;
3. An attending physician's statement; or
4. Copies of medical records.

(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than when [at the time of delivery of] the policy or certificate is delivered unless it was retained by the applicant when the applicant applied [at the time of application].

(5) Every insurer issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both Kentucky and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the commissioner in the form incorporated by reference in this administrative regulation as HIPMC-LTC-3 (09/01) [format prescribed by the National Association of Insurance Commissioners in Appendix A].

Section 9. [6.] Minimum Standards for Home Health and Community Care Benefits in Long-term Care Insurance Policies. (1) If a long-term care insurance policy or certificate provides benefits for home health care or community care services, it shall not limit or exclude benefits by:

(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health-care services were not provided;

(b) Requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home, community, or institutional setting before home health-care services are covered;

(c) Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of his licensure or certification;

(e) Excluding coverage for personal care services provided by a home health aide;

(f) Requiring that the provision of home health-care services be at a level of certification or licensure greater than that required by

the eligible service;

(g) Requiring that the insured or claimant have an acute condition before home health-care services are covered;

(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) Excluding coverage for adult day care services.

(2) If a long-term care insurance policy or certificate provides for home health or community care services, it shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, ~~when [at the time]~~ covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home health-care coverage may be applied to the nonhome health-care benefits provided in the policy or certificate if ~~when~~ determining maximum coverage under the terms of the policy or certificate.

Section 10. ~~[7-]~~ Requirement to Offer Inflation Protection. (1) An insurer shall not offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or a policy that provides for an increase in the period of coverage which shall meet anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder, ~~when the policy is purchased [at the time of purchase]~~, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five (5) percent;

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status if ~~so long as~~ the option for the previous period has not been declined. The amount of the additional benefit shall ~~not be [no]~~ less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five (5) percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) If ~~[Where]~~ the policy is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder, but if the policy is issued to a group defined in KRS 304.14-600(4)(d) other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) Insurers shall include the following information in or with the outline of coverage. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(a) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period; and

(b) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(5) Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status, or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as provided in subsection (1)(a) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

(b) The rejection, which may be either in the application or in a separate form, shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans ____, and I reject inflation protection."

Section 11. ~~[8-]~~ Requirements for Application Forms and Replacement Coverage. (1)(a) Application forms shall include ~~the following~~ questions designed to elicit information as to whether:

1. ~~[(a)]~~ The applicant has another long-term care insurance policy or certificate in force as of the date of application; or

2. ~~[(b)]~~ A long-term care insurance policy or certificate is intended to replace:

a. ~~[4-]~~ Any other accident and sickness policy or certificate presently in force; or

b. ~~[2-]~~ Any other long-term care policy or certificate presently in force.

~~[(c)]~~ Except if ~~where~~ coverage is sold without an agent, a supplementary application or other form, containing the questions required by this section, may be used if signed by the:

1. Applicant; and

2. Agent.

~~[(d)]~~ If a replacement policy is issued to a group, as defined by KRS 304.14-600(4)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificate holder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force (including health-care service contract or health maintenance organization contract)?

2. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

a. If so, with which company?

b. If that policy lapsed, when did it lapse?

3. Are you covered by Medicaid?

4. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(2) Agents shall list other health insurance policies they have sold to the applicant which:

(a) Are still in force; and

(b) Were sold in the past five (5) years but are no longer in force.

(3) Solicitations other than direct response.

(a) Upon determining that a sale will involve replacement, an insurer (other than an insurer using direct response solicitation methods) or its agent shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage.

(b) One (1) copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.

(c) The notice shall be provided as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF INDIVIDUAL ACCIDENT AND SICKNESS OR
LONG-TERM CARE INSURANCE
(Insurer's name and address)

SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is

a wise decision.

STATEMENT TO APPLICANT BY AGENT (BROKER OR OTHER REPRESENTATIVE):

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

Signature of Agent, [X] Broker, or Other Representative []:

Typed Name and Address of Agent or Broker:

The above "Notice to Applicant" was delivered to me on:

Date:

Applicant's Signature:

(4) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant when it is determined that a sale will involve a replacement ~~upon issuance of the policy~~. The notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE (Insurer's name and address) SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage)

for similar benefits to the extent the time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

Insurer Name:

(5) If ~~Where~~ replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. The notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy.

(a) If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of 806 KAR 12:080.

(b) If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

Section 12. ~~9.~~ Reporting Requirements. (1) An ~~Every~~ insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(2) An ~~Each~~ insurer shall report annually by June 30 the ten (10) percent of its agents with the greatest percentages of lapses and replacements as measured by subsection (1) of this section.

(3) Reported replacement and lapse rates shall not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports ~~shall be for~~ for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(4) An ~~Every~~ insurer shall report annually by June 30 the number of lapses policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(5) An ~~Every~~ insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(6) An insurer shall report annually by June 30, by completing and filing HIPMC-LTC-4 (09/01), incorporated by reference in this administrative regulation, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.

(7) All reports shall be made on a statewide basis. ~~For purposes of this section;~~

(a) "Policy" means only long term care insurance;

(b) Subject to paragraph (c) of this subsection, "claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "Report" means on a statewide basis.

(8) All reports required by this section shall be filed with the

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~~commissioner. ["policy" shall mean only long-term care insurance and "report" means on a statewide basis.]~~

Section 13. ~~[40.]~~ Licensing. An agent shall not be authorized to market, sell, solicit, or otherwise contact a person for the purpose of marketing long-term care insurance unless the agent has demonstrated his knowledge of long-term care insurance and the appropriateness of the insurance by passing a test required by KRS 304.9-105(5)(c) [Kentucky] [this state] and maintaining appropriate licenses.

~~[Section 11. Discretionary Powers of Commissioner. The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this administrative regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:~~

~~(1) The modification or suspension would be in the best interest of the insureds;~~

~~(2) The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and~~

~~(3)(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or~~

~~(b) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or~~

~~(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.]~~

Section 14. ~~[42.]~~ Reserve Standards. (1)(a) If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) Claim reserves shall also be established if the policy or rider is in claim status.

(c) Reserves for policies and riders subject to the requirements of this subsection may be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates.

(d) Single decrement approximations shall be ~~[are]~~ acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial.

(e) The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits, ~~except [but]~~ the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(f) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs, including ~~[such as]~~ the following:

1. Definition of insured events;
2. Covered long-term care facilities;
3. Existence of home convalescence care coverage;
4. Definition of facilities;
5. Existence or absence of barriers to eligibility;
6. Premium waiver provision;
7. Renewability;
8. Ability to raise premiums;
9. Marketing method;
10. Underwriting procedures;
11. Claims adjustment procedures;
12. Waiting period;
13. Maximum benefit;
14. Availability of eligible facilities;
15. Margins in claim costs;
16. Optional nature of benefit;

17. Delay in eligibility for benefit;
18. Inflation protection provisions; and
19. Guaranteed insurability option.

(g) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) If ~~[When]~~ long-term care benefits are provided other than as in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

Section 15. ~~[43.]~~ Loss Ratio. (1) This section shall apply to all long-term care insurance policies or certificates except those covered under Sections 7 and 16 of this administrative regulation.

(2) Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums if ~~[provided]~~ the expected loss ratio is at least sixty (60) percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

~~(a) [(4)]~~ Statistical credibility of incurred claims experience and earned premiums;

~~(b) [(2)]~~ The period for which rates are computed to provide coverage;

~~(c) [(3)]~~ Experienced and projected trends;

~~(d) [(4)]~~ Concentration of experience within early policy duration;

~~(e) [(5)]~~ Expected claim fluctuation;

~~(f) [(6)]~~ Experience refunds, adjustments, or dividends;

~~(g) [(7)]~~ Renewability features;

~~(h) [(8)]~~ All appropriate expense factors;

~~(i) [(9)]~~ Interest;

~~(j) [(10)]~~ Experimental nature of the coverage;

~~(k) [(14)]~~ Policy reserves;

~~(l) [(12)]~~ Mix of business by risk classification; and

~~(m) [(13)]~~ Product features such as long elimination periods, high deductibles, and high maximum limits.

(3) Subsection (2) of this section shall not apply to life insurance policies that accelerate benefits for long-term care.

(4) A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit shall be ~~[is]~~ considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of KRS 304.15-310; ~~[]~~

(c) The policy meets the following disclosure requirements:

1. If an application for a long-term care insurance contract or certificate is approved, the insurer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval;

2. When the policy is delivered ~~[At the time of policy delivery]~~, a policy summary shall be delivered in accordance with KRS 304.14-615(9);

3. The policy summary shall state ~~[A statement]~~ that any long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available under this policy;

4. ~~[The provision of]~~ The policy summary required by subparagraph 2 of this paragraph ~~[listed above]~~ may be incorporated into a basic illustration that meets the requirements of Section 29 of this administrative regulation; and

5. A monthly report shall be provided in accordance with KRS 304.14-615(10), when a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status;

(d) Any policy illustration ~~[that]~~ meets the applicable requirements of Section 29 of this administrative regulation; and

(e) An actuarial memorandum is filed with the insurance department that includes:

1. A description of the basis on which the long-term care rates were determined;

2. A description of the basis for the reserves;

3. A summary of the type of policy, benefits, renewability, gen-

eral marketing method, and limits on ages of issuance;

4. A description and a table of each actuarial assumption used. For expenses, an insurer shall ~~must~~ include percent of premium dollars per policy and dollars per unit of benefits, if any;

5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

6. The estimated average annual premium per policy and the average issue age;

7. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

8. A description of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

Section 16. Premium Rate Schedule Increases. (1) This section shall apply as follows:

(a) Except as provided in paragraph (b) of this subsection ~~section~~, this section shall apply ~~applies~~ to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.

(b) For certificates issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.

(2) An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least thirty (30) days prior to the notice to the policyholders and shall include:

(a) Information required by Section 6 of this administrative regulation;

(b) Certification by a qualified actuary that:

1. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately-adverse conditions, are realized, no further premium rate schedule increases are anticipated; and

2. The premium rate filing is in compliance with the provisions of this section;

(c) An actuarial memorandum justifying the rate schedule change request that includes:

1. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

a. Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;

b. The projections shall include the development of the lifetime-loss ratio, unless the rate increase is an exceptional increase;

c. The projections shall demonstrate compliance with subsection (3) of this section; and

d. For exceptional increases:

(i) The projected experience shall ~~should~~ be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(ii) If the commissioner determines as provided in subsection (12) ~~(3)~~(b) of this section that offsets may exist, the insurer shall use appropriate net-projected experience;

2. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

3. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

4. A statement that policy design, underwriting, and claims adju-

dication practices have been taken into consideration; and

5. If it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates;

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the commissioner.

~~(3) [The commissioner;~~

~~(a) May request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase; and~~

~~(b) In determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claim costs.~~

~~(4)~~ Premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Exceptional increases shall provide that seventy (70) percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

1. The accumulated value of the initial earned premium times fifty-eight (58) percent;

2. Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;

3. The present value of future projected initial earned premiums times fifty-eight (58) percent; and

4. Eighty-five (85) percent of the present value of future projected premiums not included in subparagraph 3 of this paragraph on an earned basis;

(c) If a policy form has both exceptional and other increases, the values in paragraph (b)2 and 4 ~~(3)~~ of this subsection shall ~~will~~ also include seventy (70) percent for exceptional rate increase amounts; and

(d) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

~~(4) [(5)]~~ For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in subsection (2)(c) of this section, annually for the next three (3) years and include a comparison of actual results to projected values.

(a) The commissioner may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections.

(b) For group insurance policies that meet the conditions in subsection (11) ~~[(42)]~~ of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

~~(5) [(6)]~~(a) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in subsection (2)(c)1 of this section, shall be filed for review by the commissioner every five (5) years following the end of the required period in subsection (4) ~~[(5)]~~ of this section.

(b) For group insurance policies that meet the conditions in subsection (11) ~~[(42)]~~ of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

~~(6) [(7)]~~(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately-adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (3) ~~[(4)]~~ of this section, the commissioner may require the insurer to implement any of the following:

1. Premium rate schedule adjustments; or
 2. Other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration shall ~~shall~~ be given to subsection (2)(c)5 of this section, if applicable.

(7) ~~(8)~~ If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) A plan, subject to commissioner's approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect. ~~If a plan is not filed, [Otherwise]~~ the commissioner may impose the condition in subsection (8) ~~(9)~~ of this section; and

(b) The original anticipated lifetime-loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (3) ~~(4)~~ of this section had the greater of the original anticipated lifetime-loss ratio or fifty-eight (58) percent been used in the calculations described in subsection (3)(b)1 ~~(4)(b)2~~ and 3 of this section.

(8) ~~(9)~~(a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;

2. The rate increase is not an exceptional increase; and

3. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) If ~~in the event~~ significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists.

(c) Following a determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one (1) or more reasonably comparable products being offered by the insurer or its affiliates.

1. The offer shall:

a. Be subject to the approval of the commissioner;

b. Be based on actuarially sound principles, ~~except for~~ ~~but not be based on~~ attained age; and

c. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

2. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. ~~If there is~~ ~~in the event of~~ a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

a. The maximum rate increase determined based on the combined experience; or ~~and~~

b. The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten (10) percent.

(9) ~~(10)~~ If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of subsection (8) ~~(9)~~ of this section, prohibit the insurer from either of the following:

(a) Filing and marketing comparable coverage for a period of up to five (5) years; or

(b) Offering all other similar coverages and ~~may limit the insurer's~~ ~~limiting~~ marketing of new applications to the products subject to recent premium rate schedule increases.

(10) ~~(11)~~ Subsections (1) through (9) ~~(11)~~ of this section shall not apply to policies for which the long-term care benefits provided by the policy are incidental, if the policy complies with all of the fol-

lowing provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

1. KRS 304.15-310;

2. KRS 304.15-315;

3. 806 KAR 15:010; and

4. 806 KAR 15:030; ~~and~~

(c) The policy meets the disclosure requirements of Section 15(4)(c) of this administrative regulation;

(d) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

1. Policy illustrations that meet the requirements of Section 29 of this administrative regulation; and

2. Disclosure requirements in 806 KAR 15:010 and 806 KAR 15:030; ~~and~~

(e) An actuarial memorandum is filed with the insurance department that includes:

1. A description of the basis on which the long-term care rates were determined;

2. A description of the basis for the reserves;

3. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

4. A description and a table of each actuarial assumption used. For expenses, an insurer shall ~~must~~ include percent of premium dollars per policy and dollars per unit of benefits, if any;

5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

6. The estimated average annual premium per policy and the average issue age;

7. A statement as to whether underwriting is performed at the time of application.

a. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting; and

b. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

8. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(11) ~~(12)~~ Subsections (6) and (8) ~~(7) and (9)~~ of this section shall not apply to group insurance policies if ~~where~~:

(a) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) The policyholder, and not the certificate holders, pays a material portion of the premium, which shall not be less than twenty (20) percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

(12) The commissioner:

(a) May request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase; and

(b) In determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claim costs.

Section 17. ~~[44.]~~ Filing Requirement for a Group Policy Issued in Another State. Prior to an insurer offering group long-term care insurance issued in another state to a resident of Kentucky pursuant to KRS 304.14-610, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in ~~Kentucky~~ ~~this state~~.

Section 18. ~~[45.]~~ Filing Requirements for Advertising. (1) ~~[(a)]~~ Every insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of any long-term care insurance advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review or approval by the commissioner in accordance with KRS 304.14-620 ~~[to the extent it may be required under state law]; and [~~

~~(2) [(b)]~~ ~~[In addition,]~~ All advertisements shall be retained by the insurer for at least three (3) years from the date the advertisement was first used.

~~[(2) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.]~~

Section 19. ~~[46.]~~ Standards for Marketing. (1) Every insurer marketing long-term care insurance coverage in this state, directly or through its agents, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

1. Any marketing activities, including any comparison of policies, by its agent or other producers will be fair and accurate; and

2. Excessive ~~[any comparison of policies by its agents or other producers will be fair and accurate.~~

~~(b) Establish marketing procedures to assure excessive] insurance is not sold or issued.~~

~~(b) [(a)]~~ Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(c) Provide to the applicant copies of the disclosure forms required in Section 6(7) of this administrative regulation.

(d) Inquire and otherwise make every reasonable effort to identify:

1. Whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance; and

2. The types and amounts of this insurance.

(e) For ~~[in the case of]~~ qualified long-term care insurance contracts, ~~not be required to make an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance, in accordance with paragraph (d) of this section, is not required].~~

~~(f) [Every insurer marketing long-term care insurance shall] Establish auditable procedures for verifying compliance with the requirements of this subsection.~~

~~(g) [(f) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner,] [The insurer shall,] At solicitation, provide written notice to the prospective policyholder and certificate holder that:~~

1. Kentucky's Insurance Programs for Seniors (KIPS) ~~[such a program]~~ is available and the ~~[name,]~~ address~~[,]~~ and telephone number of the program; and

2. The Kentucky State Health Insurance Assistance Program (SHIP) is available and the address and telephone number of the program.

~~(h) For long-term care insurance policies and certificates, use the terms, "noncancellable" or "level premium" only if [when] the policy or certificate conforms to Section 3(1)(c) and (d) of this administrative regulation.~~

~~(i) Provide an explanation of contingent benefit upon lapse provided for in Section 22(4)(c) of this administrative regulation.~~

(2) In addition to the practices prohibited in KRS Chapter 304.12, the following acts and practices shall be ~~[are]~~ prohibited:

(a) Twisting; ~~[Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.]~~

(b) High pressure tactics; ~~[Employing any method of marketing having the effect of or tending to induce the purchase of insurance~~

~~through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.]~~

(c) Cold lead advertising; and ~~[Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.]~~

~~(d) Misrepresentation. [Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.]~~

~~(3)(a) With respect to the obligations set forth in this subsection, the primary responsibility of an association, as defined in KRS 304.14-600(4)(b), if [when] endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions.~~

~~(b) Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by the [such] associations to ensure that members of the [such] associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.~~

~~(c) The insurer shall file with the insurance department the following material:~~

1. The policy and certificate;

2. A corresponding outline of coverage; and

3. All advertisements requested by the insurance department pursuant to Section 18(1) of this administrative regulation.

~~(d) The association shall disclose in any long-term care insurance solicitation:~~

1. The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees, and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

2. A brief description of the process under which the policies and the insurer issuing the policies were selected.

~~(e) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.~~

~~(f) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies and [as well as] the compensation arrangements made with the insurer.~~

~~(g) Except for qualified long-term care insurance contracts, the association shall also:~~

1. At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter if there is a ~~[in the event of]~~ material change;

2. Actively monitor the marketing efforts of the insurer and its agents; and

3. Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

~~(h) A [No] group long-term care insurance policy or certificate shall not [may] be issued to an association unless the insurer files with the commissioner the information required in this subsection.~~

~~(i) An insurer shall not issue a long-term care policy or certificate to an association or continue to market the [such a] policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.~~

~~(j) Failure to comply with the filing and certification requirements of this section shall constitute [constitutes] an unfair trade practice in violation of KRS 304.12-130.~~

Section 20. Suitability. (1) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

(2) An insurer marketing long-term care insurance shall:

(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train its agents in the use of its suitability standards; ~~[;]~~ and

(c) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(3)(a) To determine whether the applicant meets the standards

developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

1. The applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

2. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

3. The values, benefits, and costs of the applicant's existing insurance, if any, as ~~when~~ compared to the values, benefits, and costs of the recommended purchase or replacement.

(b) The insurer, and if ~~where~~ an agent is involved, the agent, shall make reasonable efforts to obtain the information set out in paragraph (a) of this subsection.

1. The insurer shall present to the applicant, at or prior to application, a "Long-term Care Insurance Personal Worksheet", HIPMC-LTC-1 (09/01), incorporated by reference in this administrative regulation.

2. The information in the format contained in HIPMC-LTC-1 (09/01) shall be in not less than twelve (12) point type.

(c) The issuer may request the applicant to provide additional information to comply with its suitability standards.

(d) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(e) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet shall be ~~is~~ prohibited.

(4) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(5) An agent shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(6) ~~When [At the same time as]~~ the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-term Care Insurance", incorporated by reference in this administrative regulation as HIPMC-LTC-5 (09/01) shall be provided.

(7) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer shall:

(a) Reject the application; or

(b) Send to the applicant a:

1. "Long-term Care Suitability Letter", incorporated by reference in this administrative regulation as HIPMC-LTC-6 (09/01); or

2. Letter approved by the commissioner as being similar to the HIPMC-LTC-6 (09/01).

(8) If the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent.

(9) Either the applicant's returned HIPMC-LTC-6 (09/01) or a record of the alternative method of verification shall be made part of the applicant's file.

(10) The insurer shall report annually to the commissioner:

(a) The total number of applications received from Kentucky residents;

(b) The number of those applicants ~~residents~~ who declined to provide information on the personal worksheet;

(c) The number of those applicants ~~residents~~ who did not meet the suitability standards; and

(d) The number of those applicants ~~residents~~ who chose to confirm after receiving a suitability letter.

~~[Section 17. Appropriateness of Recommended Purchase. In recommending the purchase or replacement of any long-term care insurance policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.]~~

Section 21. ~~[48.]~~ Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a long-term care insurance policy or certificate replaces another long-

term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 22. Nonforfeiture Benefit Requirement. (1) This section shall ~~does~~ not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2) Except as provided in subsection (3) of this section, a long-term care insurance policy shall not be delivered or issued for delivery unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit.

(a) The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy.

(b) If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rate.

(3) If ~~When~~ a group long-term care insurance policy is issued, the offer required in subsection (2) of this section shall be made to:

(a) The group policyholder; or

(b) If the policy is issued as group long-term care insurance, as defined in KRS 304.14-600(4)(d), other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

(4) A nonforfeiture benefit offer pursuant to subsection (2) of this section shall meet the following requirements: ~~[that complies with the following requirements:]~~

(a) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits; ~~[.]~~

(b) The nonforfeiture benefit included in the offer shall be the benefit described in subsection (5) of this section; and

(c) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage required pursuant to KRS 304.14-615(7), or other materials given to the prospective policyholder.

(5) ~~[(3)]~~ If the offer required to be made under subsection (2) of this section is rejected, the insurer shall provide the contingent benefit upon lapse described in ~~[this]~~ subsection (6) of this section.

(6) ~~[(4)](a)~~ After rejection of the offer required under subsection (2) of this section, for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.

(b) If ~~[in the event]~~ a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in this paragraph based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased:

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%

65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(d) Unless otherwise required by Section 6(8) of this administrative regulation, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase, set forth in paragraph (c) of this subsection.

(e) On or before the effective date of a substantial premium increase as defined in paragraph (c) of this subsection, an insurer shall:

1. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

2. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (5) of this section. This option may be elected at any time during the 120-day period referenced in paragraph (c) of this subsection; and

3. Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in paragraph (c) of this subsection shall be deemed to be the election of the offer to convert in subparagraph 2 of this paragraph.

(7) ~~(5)~~ Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, shall be as described in this subsection:

(a) ~~[For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).~~

~~(b)~~ For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) shall ~~will~~ be payable for a qualifying claim, ~~except [but]~~ the lifetime maximum dollars or days of benefits shall be determined as specified in paragraph (b) ~~(c)~~ of this subsection.

(b) ~~(c)~~ The standard nonforfeiture credit shall ~~will~~ be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits.

1. An insurer may offer additional shortened benefit period options, if ~~as long as~~ the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration;

2. The minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse; and

3. ~~[In either event,]~~ The calculation of the nonforfeiture credit shall be ~~is~~ subject to the limitation of subsection (6) of this section.

(c) ~~(d)~~ 1. Except as provided by subparagraph 2 of this paragraph, the nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first

three (3) years and ~~as well as~~ thereafter.

2. Notwithstanding subparagraph 1 of this paragraph, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

a. The end of the tenth year following the policy or certificate issue date; or

b. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

~~(d) (e)~~ Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

~~(8) (6)~~ All benefits paid by an insurer while the policy or certificate is in premium paying status and in the paid up status shall ~~will~~ not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

~~(9) (7)~~ There shall not be a ~~no~~ difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

~~(10) (8)~~ The requirements set forth in this section shall apply ~~[become effective]~~ twelve (12) months after the effective date of this administrative regulation:

(a) Except as provided in paragraph (b) of this subsection, the provisions of this section shall apply to any long-term care policy issued in Kentucky on or after the effective date of this administrative regulation.

(b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy in force at the time this administrative regulation became effective, the provisions of this section shall not apply.

~~(11) (9)~~ Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 15 of this administrative regulation, treating the policy as a whole.

~~(12) (40)~~ To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (6) ~~(4)~~(c) of this section, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

~~(13) (44)~~ A nonforfeiture benefit for qualified long-term care insurance contracts that are level-premium contracts shall be offered that meets the following requirements:

(a) The nonforfeiture provision shall be appropriately captioned;

(b) The nonforfeiture provision shall provide a benefit available if ~~there is [in the event of]~~ a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

(c) The nonforfeiture provision shall provide at least one (1) of the following:

1. Reduced paid-up insurance;
2. Extended term insurance;
3. Shortened benefit period; or
4. Other similar offerings approved by the commissioner.

Section 23. Standards for Benefit Triggers. (1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment.

(2) Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

(3)(a) Activities of daily living shall include at least the following as defined in Section 2 of this administrative regulation and in the policy:

1. Bathing;
2. Continence;
3. Dressing;
4. Eating;
5. Toileting; and

6. Transferring:

(b) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in paragraph (a) of this subsection if ~~as long as~~ they are defined in the policy.

(4) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate and the provisions shall not restrict, and shall not be in lieu of, the requirements contained in subsections (1), (2), and (3) of this section.

(5) For purposes of this section the determination of a deficiency shall not be more restrictive than:

(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) If the deficiency is due to the presence of a cognitive impairment, **needing** supervision or verbal cueing by another person ~~is needed~~ in order to protect the insured or others.

(6) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

(7) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(8) A long-term care insurance policy shall cover services as required by KRS 304.14-617.

(9) The requirements set forth in subsections (1) through (8) of this section shall apply ~~be effective~~ twelve (12) months after the effective date of this administrative regulation ~~and shall apply~~ as follows:

(a) Except as provided in paragraph (b) of this subsection, the provisions of this section shall apply to a long-term care policy issued in Kentucky on or after the effective date of this administrative regulation.

(b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy that was in force at the time this administrative regulation became effective, the provisions of this section shall not apply.

Section 24. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts. (1) ~~For purposes of this section the following definitions apply:~~

(a) ~~"Qualified long-term care services" means services that meet the requirements of 26 USC 7702B(c)(1) as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.~~

(b) ~~1. "Chronically ill individual" pursuant to 26 USC 7702B(c)(2), means any individual who has been certified by a licensed health care practitioner as:~~

~~a. Being unable to perform (without substantial assistance from another individual) at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or~~

~~b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.~~

~~2. The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12) month period a licensed health care practitioner has certified that the individual meets these requirements.~~

(c) ~~"Licensed health care practitioner" means a physician, as defined in 42 USC 1395x(r), a registered professional nurse, licensed social worker or other individual who meets the requirements prescribed by the Secretary of the Treasury.~~

(d) ~~"Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).~~

(2) ~~A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health-care practitioner.~~

(2) ~~(3)~~ A qualified long-term care insurance contract shall con-

dition the payment of benefits on a **certified** determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity or to severe cognitive impairment.

(3) ~~(4)~~ Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (2) ~~(3)~~ of this section shall be performed by a **licensed health care practitioner** ~~(the following licensed or certified professionals: physicians, registered nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury).~~

(4) ~~(5)~~ Certifications required pursuant to subsection (2) ~~(3)~~ of this section may be performed by a licensed health-care professional at the direction of the carrier if it ~~is~~ **is** reasonably necessary with respect to a specific claim, except that if ~~when~~ a licensed health-care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification shall ~~may~~ **may** not be rescinded and additional certifications shall ~~may~~ **may** not be performed until after the expiration of the ninety (90) day period.

(5) ~~(6)~~ Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

Section 25. ~~19.~~ Standard Format Outline of Coverage. This section of the administrative regulation implements, interprets, and makes specific the provisions of KRS 304.14-615(7) in prescribing a standard format and the content of an outline of coverage.

(1) The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type.

(2) The outline of coverage shall **not** contain ~~no~~ material of an advertising nature.

(3) Text that ~~which~~ is capitalized or underscored ~~emphasized~~ in the standard format outline of coverage may be emphasized by any means which provide prominence equivalent to the capitalization or underscoring ~~text~~.

(4) Use of the text and sequence of text of the standard format outline of coverage shall be ~~is~~ **is** mandatory, **except as** ~~unless otherwise~~ specifically indicated.

(5) Format for outline of coverage:

(INSURER NAME)
(ADDRESS-CITY & STATE)
(TELEPHONE NUMBER)
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE
(Policy Number or Group Master Policy and Certificate Number)

(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall ~~must~~ appear as follows in the outline of coverage):

Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)

(a) This policy is (an individual policy of insurance or a group policy) which was issued in the (indicate jurisdiction in which group policy was issued).

(b) PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

(c) FEDERAL TAX CONSEQUENCES.

This (policy or certificate) is intended to be a federally-tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this (policy or certificate). This (policy or certificate) is not intended to be a federally-tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the (policy or certificate) may be taxable as income.

(d) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

1. (For long-term care health insurance policies or certificates, ~~describe~~ one (1) of the following permissible policy renewability provisions **shall be described**):

a. (Policies and certificates that are guaranteed renewable shall contain the following statement:) **RENEWABILITY: THIS POLICY (CERTIFICATE) IS GUARANTEED RENEWABLE.** This means you have the right, subject to the terms of your policy (certificate), to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own, except that, in the future, **IT MAY INCREASE THE PREMIUM YOU PAY.**

b. (Policies and certificates that are noncancellable shall contain the following statement:) **RENEWABILITY: THIS POLICY (CERTIFICATE) IS NONCANCELLABLE.** This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, (Insurer) may increase your premium at that time for those additional benefits.

2. (For group coverage, ~~specifically describe~~ continuation/conversion provisions applicable to the certificate and group policy **shall be specifically described.** [;])

3. **(The outline of coverage shall describe waiver of premium provisions or state that there are no premium [such] provisions.)**

(e) TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

(In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, **the outline of coverage shall state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.**)

(f) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

1. (~~Provide~~ A brief description of the right to return - "free look" provision of the policy **shall be provided**).

2. (~~Include~~ A statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate **shall be included**. If the policy contains these provisions, ~~include~~ a description of them **shall be included**).

(g) ~~(4)~~ **THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare [~~Medicare Supplement Buyer's Guide~~] available from the insurer.

1. (For agents) Neither (insert insurer name) nor its agents represent Medicare, the federal government, or any state government.

2. (For direct response) (insert insurer name) is not representing Medicare, the federal government, or any state government.

(h) ~~(4)~~ **LONG-TERM CARE COVERAGE.** Policies of this category are designed to provide coverage for one (1) or more necessary or medically-necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (~~Modify~~ This paragraph **shall be modified** if the policy is not an indemnity policy).

(i) ~~(4)~~ BENEFITS PROVIDED BY THIS POLICY.

1. (Covered services, related deductible(s), waiting periods,

elimination periods, and benefit maximums).

2. (Institutional benefits, by skill level).

3. (Noninstitutional benefits, by skill level).

4. Eligibility for payment of benefits.

a. (Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.)

b. (Any additional benefit triggers ~~screens~~ shall also be explained ~~in this section~~. If these triggers ~~screens~~ differ for different benefits, explanation of the triggers ~~screen~~ shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this shall be specified. ~~If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens shall be explained.~~)

(j) ~~(4)~~ LIMITATIONS AND EXCLUSIONS.

(The outline of coverage shall describe:

1. Preexisting conditions;

2. Noneligible facilities or providers;

3. Noneligible levels of care, **such as** ~~(e.g.)~~ unlicensed providers, care, or treatment provided by a family member~~, etc.~~);

4. Exclusions and exceptions; and

5. Limitations).

(This section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (i) ~~(4)~~ of this subsection.)

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

(k) ~~(4)~~ RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, ~~indicate~~ the following **shall be indicated**:

1. That the benefit level will not increase over time;

2. Any automatic benefit adjustment provisions;

3. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

4. If there is ~~such~~ a guarantee, ~~include~~ whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and

5. ~~Describe~~ Whether there will be any additional premium charge imposed, and how that is to be calculated).

~~(4)~~ TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

~~1. Describe the policy renewability provisions;~~

~~2. For group coverage, specifically describe continuation and conversion provisions applicable to the certificate and group policy;~~

~~3. Describe waiver of premium provisions or state that there are no waiver of premium provisions; and~~

~~4. State whether or not the company has a right to change premium, and if this right exists, describe clearly and concisely each circumstance under which premium may change.~~

(l) ~~(4)~~ ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

(The outline of coverage shall state that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. It shall specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for these insureds).

(m) ~~(4)~~ PREMIUM.

1. ~~State~~ The total annual premium for the policy **shall be stated**; and

2. If the premium varies with an applicant's choice among benefit options, ~~indicate~~ the portion of annual premium which corresponds to each benefit option **shall be indicated.**)

(n) ~~(4)~~ ADDITIONAL FEATURES.

1. **The outline of coverage shall** indicate if medical underwriting is used; and

2. Describe other important features.)

(o) CONTACT THE SENIOR HEALTH INSURANCE PROGRAM

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IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE, CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Section 26. ~~[20.]~~ Requirement to Deliver Shopper's Guide. (1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the Commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) ~~For [in the case of]~~ agent solicitations, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) ~~For [in the case of]~~ direct response solicitations, the shopper's guide shall be presented in conjunction with any application or enrollment form.

(2) Life insurance policies or riders containing accelerated long-term care benefits shall ~~[are]~~ not be required to furnish the shopper's guide, ~~except they [but]~~ shall furnish the policy summary required under KRS 304.14-615.

Section 27. Penalties. In addition to any other penalties provided by the laws of Kentucky, any insurer or agent found to have violated any requirement of Kentucky relating to the regulation or marketing of long-term care insurance ~~[or the marketing of such insurance]~~ shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

Section 28. ~~[24.]~~ Permitted Compensation Arrangements. (1) Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200 percent of the renewal compensation payable by the replacing insurer on renewal policies. ~~[An insurer may provide commission or other compensation to an agent for the sale of a long-term care insurance policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.]~~

(2) ~~[Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200 percent of the renewal compensation payable by the replacing insurer on renewal policies.]~~ The commission or other compensation provided in subsequent (renewal) years by the replacing insurer shall be the same as that provided in the second year or period and shall be provided for a reasonable number of renewal years.

(3) If long-term care insurance is provided under annuities or life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders. ~~[No entity shall provide compensation to its agents or other producers and no agents or producer shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies.]~~

(4) ~~For purposes of this section, "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.]~~

Section 29. Illustrations. (1)(a) An illustration used in the sale of a life insurance policy that funds long-term care benefits, shall satisfy the applicable requirements of this administrative regulation, be clearly labeled "life insurance illustration", and contain the following basic information:

1. Name of insurer;
2. Name and business address of producer or insurer's authorized representative, if any;
3. Name, age, and sex of proposed insured, except if ~~[where]~~ a composite illustration is permitted under this regulation;
4. Underwriting or rating classification upon which the illustration is based;
5. Generic name of policy, the company product name, if different, and form number;

6. Initial death benefit; and
7. Dividend option election or application of nonguaranteed elements, if applicable.

(b) ~~If [When]~~ using an illustration in the sale of a life insurance policy that funds long-term care benefits, an insurer or its producers or other authorized representatives shall not:

1. Represent the policy as anything other than a life insurance policy;

2. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

3. State or imply that the payment or amount of nonguaranteed elements is guaranteed;

4. Use an illustration that does not comply with the requirements of this administrative regulation;

5. Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

6. Provide an applicant with an incomplete illustration;

7. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

8. Use the term "vanish" or "vanishing premium", or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;

9. Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or

10. Use an illustration that is not "self-supporting".

(c) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

(2)(a) Format. A basic illustration shall conform with the following requirements:

1. The illustration shall be labeled with the date on which it was prepared;

2. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven (7) page illustration shall be labeled "page 4 of 7 pages");

3. The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified;

4. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force;

5. The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;

6. Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;

7. If the illustration shows any nonguaranteed elements, they shall not ~~[cannot]~~ be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed;

8. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page one for guaranteed elements");

9. The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender;

10. The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable;

11. Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;

12. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

- a. The benefits and values are not guaranteed;
- b. The assumptions on which they are based are subject to change by the insurer; and

c. Actual results may be more or less favorable;

13.a. If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration shall clearly disclose that:

(i) A charge continues to be required; and

(ii) Depending on actual results, the premium payer may need to continue or resume premium outlays.

b. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up; and

14. If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(b) Narrative summary. A basic illustration shall include the following:

1. A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

2. A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

3. A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

4. Identification and a brief description of column headings and key terms used in the illustration; and

5. A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(c) Numeric summary.

1. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium.

2. This summary shall be shown for at least policy years five (5), ten (10), and twenty (20), and at age seventy (70), if applicable, on the three (3) bases shown below. For multiple life policies the summary shall show policy years five (5), ten (10), twenty (20) and thirty (30).

a. Policy guarantees;

b. Insurer's illustrated scale;

c. Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

(i) Dividends at fifty (50) percent of the dividends contained in the illustrated scale used;

(ii) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(iii) All nonguaranteed charges, including term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

3. If coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three (3) bases.

(d) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner for ~~in the case of~~ an illustration provided at time of delivery, as required in this administrative regulation.

1. A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

2. A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(e) Tabular detail.

1. A basic illustration shall include the following for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity, or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

a. The premium outlay and mode the applicant plans to pay and the contract premium, as applicable.

b. The corresponding guaranteed death benefit, as provided in the policy; and

c. The corresponding guaranteed value upon surrender, as provided in the policy.

2. For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

3. Nonguaranteed elements may be shown if described in the contract.

a. If an illustration is for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends.

b. If any nonguaranteed elements are shown they shall be shown at the same durations as the corresponding guaranteed elements, if any.

c. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

(3)(a) A supplemental illustration may be provided if:

1. It is appended to, accompanied by or preceded by, a basic illustration that complies with this administrative regulation;

2. The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

3. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

4. For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

Section 30. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Long-term Care Insurance Personal Worksheet, HIPMC-LTC-1 (09/01);

(b) Long-term Care Insurance Potential Rate Increase Disclosure Form, HIPMC-LTC-2 (09/01);

(c) Rescission Reporting Form for Long-term Care Policies, HIPMC-LTC-3 (09/01);

(d) Claims Denial Reporting Form for Long-term Care Insurance, HIPMC-LTC-4 (09/01);

(e) Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5 (09/01); and

(f) Long-term Care Insurance Suitability Letter, HIPMC-LTC-6 (09/01).

(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. Forms may also be obtained on

the Department's internet web site at www.doi.state.ky.us.

~~(2) If long-term care insurance is provided under annuities or life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders.~~

APPENDIX A
**RESCISSION REPORTING FORM FOR
 LONG TERM CARE POLICIES**
 FOR THE STATE OF _____
 FOR THE REPORTING YEAR 19(____)

Company Name:
 Address:
 Phone Number:
 Due: March 1 annually
 Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effected by an insured are not required to be included in this report. Please furnish one (1) form per rescission.

Policy Form #	Policy & Certificate #	Name of Insured	Date of Policy Issuance	Date's Claim's Submitted	Date of Rescission

Detailed reason for rescission:
 Signature:
 Name and Title (please type):
 Date:}

JANIE A. MILLER, Commissioner
 RONALD B. MCCLLOUD, Secretary
 CONTACT PERSON: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602.

APPROVED BY AGENCY: April 10, 2002
 FILED WITH LRC: April 11, 2002 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
 Department of Housing, Buildings and Construction
 Division of Building Codes Enforcement
 (As Amended at ARRS, June 11, 2002)

815 KAR 7:120. Kentucky Building Code/2002.

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform state-wide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions. [adopts the International Building Code/2000, First Edition, Chapters 1 through 35 with modifications, thereby establishing the Kentucky Building Code's basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation, electrical systems and accessibility to physically disabled persons. Amendment of this administrative regulation is necessary to accomplish three (3) objectives: (a) to update the referenced edition of the National Electrical Code to 2002; (b) to extend the mandatory compliance deadline of the new Kentucky Residential Code/2002 until July 1, 2002 and (c) amend Chapter 4 by creating a new subsection regarding inspection of industrialized building systems.]

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Department" is defined by KRS 198B.010(11).

(5) "Farm" means property located outside the corporate limits of a municipality on at least ten (10) acres and having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) and qualified by and registered with the property valuation administrator in that county.

(6) "Fire Code Official" means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in 815 KAR Chapter 10.

(7) "Industrialized building system" or "building system" is defined in KRS 198B.010(16) ~~[(48)]~~.

(8) "KBC" means the Kentucky Building Code as established in 815 KAR Chapter 7.

(9) "Kentucky Residential Code/2002" means the International Residential Code, 2000, as amended for application in Kentucky by 815 KAR 7:125.

(10) "Kentucky Standards of Safety" means the administrative regulations established in 815 KAR Chapter 10, which were established by the Commissioner of the Department of Housing, Buildings and Construction pursuant to KRS 227.300 to serve as the fire prevention code for existing buildings as well as a supplement to this code, where applicable.

(11) "KRS" means the Kentucky Revised Statutes.

(12) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(13) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(14) "Ordinary repair" is defined by KRS 198B.010(19).

(15) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(16) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(17) "Two (2) family dwelling" means a building containing not more than two dwelling units which are connected.

Section 2. Administration and Enforcement of the Building Code.

(1) Notwithstanding the requirements of the International Building Code/2000, the Kentucky changes set forth in the Kentucky Building Code Supplement ~~[, May 10, 2001,]~~ shall be mandatory and shall supercede any conflicting provision of the international code. Except as superceded by the provisions of this administrative regulation or the Kentucky Building Code Supplement, the International Building Code/2000, First Edition, Chapters 1 through 35 shall be the mandatory state building code for Kentucky for all buildings; except that one (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

(2) The International Building Code shall be amended as set forth in the Kentucky Building Code Supplement ~~[, May 10, 2001, incorporated by reference in Section 4 of this administrative regulation].~~

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department, only.

(1) Fast track elective. A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee. The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000. The entire fee shall be paid at the time of the initial plan submission.

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(2)(a) Calculation of departmental inspection fees shall require:

1. ~~[(a)]~~ New buildings shall require multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. ~~[(b)]~~ Computing the square footage by the outside dimensions of the building.

~~[(c)]~~ The fee for buildings with multiple or mixed occupancies may be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be:

- (a) Assembly occupancies, 8.5 cents;
- (b) Business occupancies, 7.5 cents;
- (c) Day care centers, 7.5 cents;
- (d) Educational occupancies, 7.5 cents;
- (e) Frozen food plants, 6.5 cents;
- (f) High hazard occupancies, 7.5 cents;
- (g) Industrial factories, 6.25 cents;
- (h) Institutional occupancies, 8.5 cents;
- (i) Mercantile occupancies, 7.5 cents;
- (j) Residential occupancies, 7.5 cents;
- (k) Warehouses, 5.5 cents;
- (l) All other nonresidential, 6.5 cents.

(4) Additions to existing buildings. Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition. The minimum fee for review of plans under this subsection ~~[section]~~ shall be \$200.

(5) Change in use. Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions. The minimum fee for review of plans under this subsection ~~[section]~~ shall be \$200.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

- 1. Multiplying the cost for the alterations or repairs by 0.0025; or
- 2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection ~~[section]~~ shall be \$200.

(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees ~~[listed]~~ shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:

- 1. 4-200 sprinklers, \$150;
- 2. 201-300 sprinklers, \$175;
- 3. 301-400 sprinklers, \$210;
- 4. 401-750 sprinklers, \$250;
- 5. Over 750 sprinklers, \$250 plus twenty (20) cents per sprinkler over 750.

(b) Fire detection system review fee:

- 1. Zero to 20,000 square feet shall be \$150;
- 2. Over 20,000 square feet shall be \$150 plus twenty (20) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) Standpipe plan review fee: \$150 (combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule).

(d) Carbon dioxide suppression system review fee:

- 1. One (1) to 200 pounds of agent shall be \$150;
- 2. Over 200 pounds of agent shall be \$150 plus two (2) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:

- 1.a. Up to thirty-five (35) pounds of agent shall be \$150;
- b. ~~[1]~~ Over thirty-five (35) pounds shall be \$150 plus six (6) cents

per pound in excess of thirty-five (35) pounds.

2. The fee for gaseous systems shall be five (5) cents per cubic foot and not less than \$150.

(f) Foam suppression system review fee:

1. Fifty (50) cents per gallon of foam concentrate ~~if [where]~~ the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.

3. The fee for review of plans under this section shall not be less than \$150 or more than \$1,500.

(g) Commercial range hood review fee: \$150 per hood.

(h) Dry chemical systems review fee (except range hoods):

- 1. One (1) to thirty (30) pounds of agent shall be \$150;
- 2. Over thirty (30) pounds of agent shall be \$150 plus 25 cents per pound in excess of thirty (30) pounds.

(i) Flammable, combustible liquids or gases and hazardous materials plan review fee: \$100 per tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overflow detection, cathodic protection or associated components.

(j) Boiler and unfired pressure vessel fees: plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. (1) ~~[The fees required by Section 3 of this administrative regulation shall take effect August 15, 2001 or the effective date of this administrative regulation, whichever occurs last.~~

~~(2) As it relates to the design and construction requirements, the building official shall accept plans in compliance with the requirements of either the 1997 or 2002 edition of the Kentucky Building Code through December 31, 2004.~~

~~(3) Effective January 1, 2002, all plans, except as provided in subsection (2) of [otherwise set forth in] this section, shall be designed and submitted to conform to the 2002 edition of the Kentucky Building Code.~~

~~(2) [(4)] Plans for single-family or one (1) family dwellings, two (2) family dwellings and townhouses may be designed and submitted to conform to either the 1997 edition of the Kentucky Building Code or the Kentucky Residential Code/2002 through June 30, 2002. Effective July 1, 2002, all plans for these dwellings shall be designed and submitted to conform to the Kentucky Residential Code/2002. [this code.]~~

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Building Code/2000", First Edition, as adopted by the Kentucky Board of Housing, Buildings and Construction, except as amended by the Kentucky Building Code Supplement, also incorporated; and

(b) "Kentucky Building Code Supplement", May 10, 2001, as amended [pages approved by Board of Housing on] November 29, 2001, and February 14, 2002 [May 10, 2004].

(2) The International Building Code is published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.

(3) This material may be inspected, copied [copies], or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANET M. HALL, Office of General Counsel

DENNIS J. LANGFORD, Commissioner

RONALD MCCLLOUD, Secretary

APPROVED BY AGENCY: April 11, 2002

FILED WITH LRC: April 15, 2002 at 10 a.m.

VOLUME 29, NUMBER 1 – JULY 1, 2002

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended at ARRS, June 11, 2002)

815 KAR 7:125. Kentucky Residential Code/2002.

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. This administrative regulation establishes [adopts the International Residential Code for One and Two Family Dwellings, 2000, First Edition, Chapters 1 through 42 with modifications, to establish] the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses. [The Kentucky Residential Code Supplement filed on June 15, 2001 is being amended; to extend the mandatory compliance deadline of the Code until July 1, 2002; update the National Electrical Code to the 2002 edition; amend seismic requirements as outlined in the "SEAOK White Paper" developed by the Structural Engineers Association.]

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Department" is defined by KRS 198B.010(11).

(5) "Farm" means property having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(7) "Manufactured home" is defined by KRS 198B.010(23) and 227.550(7).

(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(11) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(12) "Two (2) family dwelling" means a building containing not more than two (2) family dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2000 as amended by this administrative regulation, [and] the Kentucky Residential Code Supplement, and the SEAOK White Paper.

(2) Exceptions.

(a) Permits, inspections and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family or townhouses shall comply with the Kentucky Building Code, 2002 as set forth in 815 KAR 7:120.

(3) The International Residential Code shall be amended as set forth in the Kentucky Residential Code Supplement and, for seismic requirements, the SEAOK White Paper developed by the Structural Engineers Association of Kentucky.

(4) Effective dates. Plans for single-family or one (1) family

dwellings, two (2) family dwellings and townhouses may be designed and submitted to conform to either the 1997 edition of the Kentucky Building Code or the Kentucky Residential Code/2002 through June 30, 2002. Effective July 1, 2002, all plans for these dwellings shall be designed and submitted to conform to the Kentucky Residential Code/2002.

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

(a) "International Residential Code/2000", First Edition, as adopted by the Kentucky Board of Housing, Buildings and Construction; ~~[and]~~

(b) "Kentucky Residential Code Supplement", November 29, 2001 and February 14, 2002; and

(c) "SEAOK White Paper", February 6, 2002 [amendments regarding seismic requirements of the KRC as developed by the Structural Engineers Association of Kentucky] [June 14, 2001].

(2) The International Residential Code is published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JANET M. HALL, Office of General Counsel
DENNIS J. LANGFORD, Commissioner
RONALD MCCLOUD, Secretary

APPROVED BY AGENCY: April 11, 2002

FILED WITH LRC: April 15, 2002 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long Term Care and Disability Services
(As Amended at ARRS, June 11, 2002)

907 KAR 1:340. Reimbursement [Payments] for hospice services.

RELATES TO: 42 USC 1396a-d ~~[KRS 205.520]~~

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3) ~~[, 42 USC 1396a-d]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services ~~[Human Resources]~~ has responsibility to administer the Medicaid Program ~~[of medical assistance]~~. KRS 205.520(3) 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 requirements for ~~[policies of the cabinet with regard to]~~ reimbursements ~~[payments]~~ for hospice services.

Section 1. Definitions. (1) ~~["Cabinet " means the Cabinet for Health Services.~~

~~(2) "CMS" means the Center for Medicare and Medicaid Services.~~

~~(3) "Department" means the Department for Medicaid Services or its [it's] designee.~~

~~(2) "Hospice provider" means an agency that is:~~

~~(a) Licensed in accordance with 902 KAR 20:140; and~~

~~(b) Medicare- and Medicaid-certified.~~

~~(3) [(4)] "Hospice recipient" means an individual who:~~

~~(a) Is eligible for Medicaid;~~

~~(b) [and] Is certified by a physician as terminally ill with a medical prognosis that life expectancy is six (6) months or less in accordance with 907 KAR 1:330; and~~

~~(c) [and] Elects to receive hospice services.~~

~~[(5) "Hospice provider" means an agency licensed in accordance with 902 KAR 20:140 and is Medicare and Medicaid-certified.]~~

Section 2. Coverage. The department shall reimburse a participating hospice provider for a service rendered to a hospice recipient

in accordance with 907 KAR 1:330.

Section 3. Reimbursement Rates for a Covered Hospice Service. (1) The reimbursement rate for a hospice service shall be ~~the same as those~~ annually established in accordance with 42 CFR 418.306 ~~[by CMS for Medicare hospice services]~~ and shall be for the following categories of hospice services:

- (a) Routine home care;
- (b) Continuous home care;
- (c) General inpatient care; and
- (d) Inpatient respite care.

(2) If a hospice recipient resides in a nursing facility participating in the Medicaid program and occupies a bed that is Medicaid-certified, the department shall reimburse an amount equal to at least ninety-five (95) percent of the nursing facility's per diem to the hospice provider to cover expenses for room and board provided by the nursing facility.

(3) Reimbursement for bed reservation days shall:

(a) Be made by the department if the hospice recipient is residing in a nursing facility and has been in Medicaid reimbursement status for at least one (1) midnight census;

(b) Be limited per hospice recipient as follows:

1. To fourteen (14) consecutive days and a total of forty-five (45) days per lifetime for the purpose of inpatient hospitalization; and

2. To fifteen (15) days per lifetime for the purpose of therapeutic home visits;

(c) Not be made after the date of death of a hospice recipient if the hospice recipient dies while in the hospital or on a home visit; and

(d) Be at the rate established in subsection (2) of this section.

(4) Reimbursement for general inpatient and inpatient respite care shall be:

(a) Limited to twenty (20) percent of the aggregate total number of days hospice care is provided to all Medicaid recipients during a twelve (12) month period, beginning November 1 of each year and ending October 31 of the following year in accordance with 42 CFR 418.302(f); and

(b) Subject to recoupment by the department if in excess of paragraph (a) of this subsection.

(5) The hospice provider cap amount shall be:

(a) \$16,650.85 per hospice recipient per year; and

(b) Adjusted for inflation or deflation annually thereafter in accordance with 42 CFR 418.309; and []

(6) A hospice provider shall submit a claim based on the geographic location where the hospice service is provided.

Section 4. Limitations on Reimbursement of Covered Hospice Services. (1) A routine home care service unit shall be a day during which a hospice recipient receives routine home care.

(2) Continuous home care shall be:

(a) Reimbursed at an hourly rate which shall be calculated by dividing the rate established pursuant to Section 3(1) of this administrative regulation by twenty-four (24);

(b) Provided a minimum of eight (8) hours per day;

(c) Reimbursed per unit which shall equal one (1) hour; and

(d) Predominately nursing care provided by a registered nurse or a licensed practical nurse.

(3) General inpatient care shall be equal to twenty four (24) hours per (1) unit.

(4) Inpatient respite care shall:

(a) Be limited to five (5) consecutive days; and

(b) Not be provided to a hospice recipient who is residing in a nursing facility.

(5) Except for the day on which a hospice recipient is discharged, the inpatient rate, either general or respite, shall be paid for the date of admission and for all subsequent inpatient days.

(6) On the day a hospice recipient is discharged from inpatient care, either general or respite, a hospice provider shall be reimbursed:

(a) Depending on the care needs of the hospice recipient, either the routine home care rate or the continuous home care rate; or

(b) The inpatient rate, either general or respite, if the hospice recipient is discharged deceased.

Section 5. Copayments. (1) The department shall pay a hospice recipient's Medicare copayment if the individual qualifies for and has elected to receive Medicaid hospice benefits as established in 907 KAR 1:330.

(2) A ~~No~~ copayment shall not be applied to a Medicaid reimbursement rate for a hospice service.

Section 6. Coverage of Drugs. (1) A reimbursement rate established in Section 3(1) of this administrative regulation shall include reimbursement for any drug related to the terminal illness of a hospice recipient.

(2) If a drug is not related to the terminal illness of a hospice recipient:

(a) A hospice provider shall complete and submit two (2) copies of the MAP 384 form and one (1) copy of the MAP 374 form to the department; and

(b) The department shall:

1. Return one (1) copy of the MAP 384 form to the hospice provider which shall indicate the maximum amount allowable for reimbursement, as determined in accordance with 907 KAR 1:018; and

2. Reimburse the hospice provider the lesser of 100 percent of the cost of the drug or the maximum amount allowable, as determined in accordance with 907 KAR 1:018.

Section 7. Appeal Rights. A hospice provider may appeal department decisions as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 374, Election of Medicaid Hospice Benefit Form, April 2001 Edition"; and

(b) "MAP 384, Hospice Drug Form, September 1992 Edition".

(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[Conditions for Participation. A hospice program shall meet the Medicare conditions for participation and any other standards set by the cabinet in order to participate in the Medicaid program.]~~

~~Section 2. Provision of Service. Payment for services shall be limited to those hospice program services as defined in 907 KAR 1:330, provided to eligible individuals meeting the criteria for receipt of hospice care as set forth in 907 KAR 1:330.~~

~~Section 3. Payment Rates. The payment rates shall be the same as those used in the Medicare program. If for some reason a Medicare payment rate is unavailable, the payment rate used by Medicaid shall be determined in the same manner as Medicare rates. In addition, for hospice patients in nursing facility beds participating in the Medicaid program, the hospice shall be paid an amount for room and board furnished by the facility which is equal to ninety five (95) percent of the Medicaid rate for the facility.~~

~~Section 4. Copayments. (1) The Medicaid program shall pay the Medicare copayments if the Medicaid recipient qualifies for and has elected Medicaid hospice benefits as specified in 907 KAR 1:330.~~

~~(2) No copayments shall be applied to Medicaid payment rates for hospice services.~~

~~Section 5. Coverage of Drugs. When the hospice provides to a participating recipient a medically necessary drug which is for a condition not relating to the terminal illness, the Medicaid program shall reimburse the hospice separately for the drug taking into consideration usual program constraints on drug coverage and payments. (Drugs relating to the terminal illness are reimbursed as a part of the usual hospice payment rate.)~~

~~Section 6. Effective Date. The amendments to this administrative regulation shall be applicable for hospice services provided on or after July 1, 1991.]~~

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MIKE ROBINSON, Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: March 28, 2002
FILED WITH LRC: March 29, 2002 at 10 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, June 11, 2002)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 205.245, 216.557(1), 20 CFR 416.2095, 416.2096, 8 USC 1621, 1641

STATUTORY AUTHORITY: KRS 194B.050(1), 205.245, 42 USC 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 194B.050(1) requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 USC 1382 authorizes the cabinet to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. This administrative regulation establishes the provisions of the supplementation program. [The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certified personal care homes that [which] accept state supplementation recipients and have thirty-five (35) percent of the residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.]**

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual who was aged, blind or had a disability.

(2) "Cabinet" is defined in **KRS 194B.005(1)**. [~~means the Cabinet for Families and Children.~~]

(3) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, is an alien as described in ~~[pursuant to]~~ Section 1(13) of 921 KAR 2:006.

(4) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973; [~~plus any other income available to the recipient as of that month; and~~]

(b) The total of the Supplemental Security Income Program payment; and

(c) Other income for the current month.

(2) A recipient shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for the Supplemental Security Income Program due to income but whose special

needs entitled him to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) A mandatory payment shall ~~discontinue when~~ ~~[continue un-til]~~:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment shall not be increased unless::

(a) Income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) ~~If [in a case of]~~ a husband and wife ~~are~~ living together, an income change after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation shall be available to a person who:

(a) Except as established in ~~[pursuant to]~~ Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with ~~[pursuant to]~~ 907 KAR 1:011, Sections 1(4), 5(5), (6), (7), (12), (13), 9, 10, and 11, 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5[3], 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7); ~~and~~

(b) Requires a special full-time living arrangement; and

(c) Has insufficient income to meet the need for care.

(2) A special full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services ~~established in~~ ~~[pursuant to]~~ 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home that:

1. Meets the requirements and provides services ~~established in~~ ~~[pursuant to]~~ 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker ~~is required to~~ ~~[must]~~ be hired to provide care other than room and board.

(3) A person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for Supplemental Security Income Program, application for Supplemental Security Income Program shall be mandatory.

Section 4. Eligibility for Caretaker Services. (1) A service by a caretaker shall be made to enable the individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) A service by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind or has a disability.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish how:

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- (a) Often the service is provided;
- (b) The service prevents institutionalization; and
- (c) Payment is made for the service.

Section 5. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with ~~[pursuant to]~~ 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

(2) The individual or couple shall not be eligible if countable resources exceed the limit of:

- (a) \$2000 for individual; or
- (b) \$3000 for couple.

Section 6. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with ~~[pursuant to]~~ 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

(2) The optional supplementation payment shall be determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Except for a payment for medical insurance or medical care and services, a payment made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7 of this administrative regulation.

(3) Income of the ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:

- 1. Himself; and
- 2. Each minor dependent child.

(4) Income of the eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered if ~~[when]~~ conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(8) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

(9) For a resident in the Elder Shelter Network Program:

(a) Income and resources of the spouse shall be disregarded for the month of separation; and

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 7. Standard of Need. (1) The standard shall be based on the living arrangement of an eligibility determination as follows:

(a) A resident of a personal care home made; ~~4-1~~ on or after January 1, 2002, \$985 ~~[2001, \$946; or 2- Effective August 1, 2001, \$947];~~

(b) A resident of a family care home made; ~~4-1~~ on or after January 1, 2002, \$717; or ~~[2001, \$685; or 2- Effective August 1, 2001, \$686; and]~~

(c) Caretaker;

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made;

~~a-1~~ on or after January 1, 2002, \$607 ~~[2001, \$577; or~~

~~b- Effective August 1, 2001, \$578];~~

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 2002, \$886; or ~~[2001, \$844; and]~~

3. An eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 2002, \$932 ~~[2001, \$889].~~

(2) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need. One-half (1/2) of the deficit shall be payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 8. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to a:

- 1. Hospital;
- 2. Psychiatric hospital; or
- 3. Nursing facility;

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.

(2) If discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall be a:

- (1) Citizen of the United States; or
- (2) Qualified alien as described in ~~[pursuant to]~~ Section 1(3) of this administrative regulation.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) A supplemental payment may be made to a Kentucky resident residing outside the state if:

(a) The individual has been placed in the other state by this state;

(b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable;

(c) For an out-of-state placement, the licensure shall be in accordance with a similar licensure act of the other state; and

(d) There is no similar licensure act in the other state, the payment shall not be made unless this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(3) To be eligible for a supplemental payment while placed out-of-state:

(a) The individual shall require the level of care provided in the out-of-state placement;

(b) There shall not be a suitable placement available in Kentucky; and

(c) The placement shall be preauthorized by staff of the Department for Community Based Services.

(4) Except as specified in subsection (10) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(5) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

- (a) Is age twenty-one (21) and over;
- (b) Is residing in the state; and
- 1. Intends to remain permanently or for an indefinite period; or
- 2. Entered the state with a job commitment or to seek employment.

(6) The applicant or recipient residing in a personal care home shall be considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on the following tests:

1. Bayley Scales of Infant Development;
2. McCarthy Scales of Children's Abilities;
3. Stanford-Binet;
4. Wechsler Adult Intelligence Scale - Revised (WAIS-R);
5. Wechsler Intelligence Scale for Children-III (WISC-III);
6. Wechsler Intelligence Scale for Children - Revised (WISC-R);

~~(a)~~ 7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI); ~~(a)~~

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(7) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

- (a) 1. Under age twenty-one (21);
2. Eligible for a supplemental payment based on blindness or disability; and
3. Residing in the state; or
- (b) 1. Age twenty-one (21) or over;
2. Incapable of indicating intent; and
3. Residing in the state.

(8) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

- (a) Parents; ~~(a)~~
- (b) If one has been appointed, his legal guardian; or
- (c) Parent applying for the supplemental payment on behalf of the individual if:
 1. The other parent lives in another state; and
 2. There is no appointed legal guardian.

(9) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if he was:

- ~~(a) Living in Kentucky and not in another state when he was first determined to be (became) incapable of indicating intent; or~~
- ~~(b) Not living in another state when he was first determined to be incapable of indicating intent.~~

(10) For an individual subject to a determination of residency as described in ~~(pursuant to)~~ subsections (8) or (9) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(11) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(12) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(13) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if he:

- (a) Returns to Kentucky; and
- (b) Has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation Supplement. A personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for a state supplementation recipient in their care as of the first calendar day of a qualifying month. A personal care home shall meet the following certification criteria to qualify for a supplementation payment:

(1) Be licensed in accordance with ~~(pursuant to)~~ KRS 216B.010 to 216B.131; and

(2) Care for a resident who has a:

(a) Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; ~~(a)~~

(b) Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alz-

heimer's, and similar diagnoses; or

(c) Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

(3) Care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds;

(4) Not be eligible for a payment during the days it received a Type A citation in accordance with ~~(pursuant to)~~ KRS 216.557(1) by the Office of Inspector General;

(5) Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home shall not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

(6) File a form, "~~(a)~~ Application for MI or MR Supplement Program Benefits" with the Department for Community Based Services by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter;

(a) Quarters shall begin in January, April, July and October;

(b) Unless MI or MR supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required;

(c) A personal care home shall provide the Department for Community Based Services with its tax identification number and address as part of the application process;

(d) A "Notice of Decision to Personal Care Home" shall be provided to a personal care home following approval or denial of an application;

(7) Provide the Department for Community Based Services with a "Monthly Report Form";

(a) The report shall list:

1. Every resident of the personal care home who was a resident on the first day of the month; and

2. The resident's Social Security number;

(b) In order to maintain confidentiality, a personal care home shall annotate the monthly report as follows with a:

1. Star indicating a resident has a mental illness or mental retardation diagnosis;

2. Check mark indicating a resident receives state supplementation; and

3. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation;

(c) The monthly report shall be used for:

1. Verification;

2. Payment; and

3. Audit purposes;

(d) The monthly report shall be postmarked to the Department for Community Based Services by the fifth working day of the month;

(8) Notify the Department for Community Based Services if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents. A personal care home may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) A personal care home's licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, para-

noia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator. The individual shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Community Based Services an exemption of the five (5) staff rule.

(b) A personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:

1. Has received mental illness or mental retardation basic training; or

2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to the Department for Community Based Services of staff who completed the training workshop.

(7) The Department for Community Based Services shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Cabinet for Health Services, Office of the Inspector General, shall visit the personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey may be separate from the annual survey;

(b) The initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months;

(c) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey may be completed during the annual licensure survey; and

(d) The Department for Community Based Services shall notify the Cabinet for Health Services, Office of Inspector General that the personal care home is ready to be certified.

(2) The Cabinet for Health Services, Office of Inspector General shall review records, observe and interview residents and staff during the certification process. The Office of Inspector General shall review records to assure the following criteria is met:

(a) Certification is on file at the personal care home to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home;

(b) The personal care home's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff;

(c) An activity is being regularly provided and meets the needs of the resident. If ~~When~~ a resident does not attend a group activity, an activity shall also be designed to meet the needs of an individual resident, for example, reading or other activity that may be provided on an individual basis. An individualized care plan shall not be ~~is not~~ required to meet this criteria; and

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side affects.

(3) The Cabinet for Health Services, Office of Inspector General shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home shall notify the Department for Community Based Services, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The cabinet shall receive from the Cabinet for Health Services, Office of Inspector General, a completed form, "Person with Mental Illness or Mental Retardation Supplement Program Certification Survey" within five (5) working days of receipt by the Cabinet for Health Services.

(6) The Cabinet for Health Services, Office of Inspector General, shall inform the Department for Community Based Services monthly of a personal care home ~~that~~ ~~which~~ receives a Type A citation. This information shall be provided by the fifth working day of each month for the prior month.

(7) The personal care home shall receive a reduced payment for the number of days the Type A citation occurred on the first administratively feasible quarter following notification by the Cabinet for Health Services, Office of Inspector General, established in ~~(pursuant to)~~ 921 KAR 2:050.

(8) A form, "Notice of Decision to Personal Care Home" shall be provided to a personal care home following the certification survey by the Cabinet for Health Services, Office of Inspector General if a criteria for certification is not met.

Section 14. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Decision to Personal Care Home^[?], edition 3/99";

(b) "Monthly Report Form^[?], edition 3/99";

(c) "Application for MI or MR Supplement Program Benefits^[?], edition 3/99"; and

(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey^[?], edition 3/99".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: April 3, 2002

FILED WITH LRC: April 9, 2002 at noon

CABINET FOR FAMILIES AND CHILDREN
 Department for Community Based Services
 Division of Policy Development
 (As Amended at ARRS, June 11, 2002)

922 KAR 1:320. Service appeals [Fair hearing].

RELATES TO: KRS Chapter 13B, 194B.005, 194B.030(8), 199.557, 209.020, 620.050(4), 620.230 [43B.005 to 13B.170], 45 CFR 205.10, 1355.21(b), 1355.30(9), 29 USC 794, 42 USC Chapter 7, subchapter IV, part B, subparts 1, 2, Part E, Chapters 21, 26, 67, sec. 5106a [620 et seq., 625, 671 et seq., 673, 675, 12101 et seq., 2000a et seq., Timmy S. v. Stumbo, 916 F.2d 312 (6th Cir. 1990)]

STATUTORY AUTHORITY: KRS [Chapter 13B,] 194B.050(1), 29 USC 794 [45 CFR 1355.21(b), 1355.30(p), [1998 Ky. Acts ch. 150,] 42 USC 5106a], EO 98-734]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 194B.030(8) designates the Cabinet's Department for Community Based Services as the state agency responsible for delivery of family services, including child and adult protection, permanency, child care, social services, public assistance, family and child support, and services to enhance family self-sufficiency. 42 USC sec. 5106a(a)(2)(B)(i) and (b)(2)(A)(xi)(II) rest grant eligibility upon state provision of an appeal process for persons found to have abused or neglected a child. 45 CFR 205.10, made applicable to title IV-E programs by references in 45 CFR 1355.21(b) and 1355.30(p), requires a state to provide for a system of hearings for persons [operate programs and fulfill the responsibilities vested in the cabinet. The cabinet, as the [single] state agency responsible for the delivery of child welfare services, adult services, and child care services is [program shall be] required by federal regulations and statutes, 45 CFR 205.10, 1355.21(b), 1355.30(p), and 42 USC 5106a, to provide a hearing to an applicant or recipient who is] aggrieved by an agency action resulting in the denial, in whole or in part, suspension, reduction, modification, [discrimination, exclusion] or termination of services. This administrative regulation establishes procedures related to appeals and shall not be construed to confer upon any person a right to an administrative hearing not expressly permitted by Kentucky statute, case law, [law] or 922 KAR Chapters 1 through 6. [The Department for Community Based Services has assured various federal agencies that it shall comply with the provisions of 29 USC 794, 42 USC 5106a, 12101 et seq., 2000a et seq., and with 45 CFR 205.10. This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.]

Section 1. Definitions. (1) "Adoption assistance" means a payment under KRS 199.557 and 922 KAR 1:050, Approval of adoption assistance.

(2) ~~["Appellant" means a person who is aggrieved by an action of the cabinet and requests resolution of an appealable issue.~~

~~(3) "Cabinet" is defined at KRS 194B.055(1). [means the Cabinet for Families and Children or designee.]~~

(3) ~~[(4)]~~ "Case planning conference" means a meeting in which a "case plan", as defined by 42 USC 675(1), is developed or modified.

(4) ~~[(5)]~~ "Certified family child care home provider" means a caregiver certified under [who meets the requirements of] 922 KAR 2:100, Certification of family child care homes.

(5) ~~[(6)]~~ "Child care assistance" means subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.

(6) ~~[(7)]~~ "Child welfare services" is defined at 42 USC 625 and described in 42 USC 629a.

(7) ~~[(8)]~~ "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(8) ~~[(9)]~~ "Contract agency" means a business or organization

that offers child welfare or child care services to the public through a contract with the cabinet.

~~[(10) "General adult services" is defined in 922 KAR 5:000, General adult services;]~~

(9) ~~[(14)]~~ "Good cause" means [an individual demonstrates] justification for failure to carry forward with a legal obligation related to an appeal. ~~[request for appeal or participate as required by this administrative regulation or KRS Chapter 13B at any stage of the cabinet's process for appeals. Justification for good cause may include:~~

~~(a) Inability to read or comprehend the cabinet's written statement describing appeal rights; or~~

~~(b) A determination by the cabinet or a hearing officer that an individual's reason for failure to submit a request for appeal or participate at any stage of the appeals process was no fault of the individual.]~~

(10) ~~[(12)]~~ "Protective services" for a vulnerable adult is defined at KRS 209.020(5).

(11) ~~[(13)]~~ "Reasonable promptness" means that the cabinet shall respond:

(a) Within thirty (30) calendar days of a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 6; or

(b) To a request for an applicable service or carry out an action within an adequate period of time so that the health and safety of an individual or household is protected.

(12) ~~[(14)]~~ "Registered child care provider" means a caregiver registered under [who meets the requirements of] 922 KAR 2:180, Requirements for unregulated provider registration in the Child Care Assistance Program.

(13) ~~[(15)]~~ "Resource home" means a home in which a parent has been certified to:

(a) Provide foster care services for a child placed by the cabinet;

(b) Adopt a child:
 1. Whose parents' parental rights have been terminated; and

2. Who is under the custodial control of the cabinet; or

(c) Provide respite service for a family approved to care for a child under the custodial control of the cabinet. ~~[is defined in 922 KAR 1:350, Family preparation.]~~

Section 2. Right to Appeal. The following may be reviewed through an administrative hearing conducted by a cabinet administrative hearing officer:

(1) Denial, in whole or in part, reduction, modification, suspension, or termination of a child welfare service;

(2) Denial, in whole or in part, of a general adult service or protective service to an adult identified as a victim of abuse, neglect or exploitation;

(3) Failure by the cabinet to:

(a) Respond with reasonable promptness to a request for:

1. Child welfare service;

2. General adult service; or

3. Protective service for a vulnerable adult; ~~[Act upon a request for a child welfare service, general adult service, or protective service for a vulnerable adult with reasonable promptness;]~~

(b) Process a resource home parent's payment with reasonable promptness;

(c) Approve an adoptive parent who meets the requirements of 922 KAR 1:100, Agency adoptions, and 922 KAR 1:350, Family preparation, for the placement of an adoptive child;

(d) Place an adoptive child in an approved adoptive parent's home with reasonable promptness;

(e) Advise an adoptive parent of the availability of adoption assistance in accordance with 42 USC 673 and 922 KAR 1:050, Approval of adoption assistance;

(f) Except as otherwise required by law, provide an adoptive parent with known relevant facts regarding the:

1. Child;

2. Child's background prior to finalization of the adoption; and

~~[or]~~ 3. Child's biological family; ~~[or]~~

(g) Complete a case plan in accordance with 42 USC 671(a)(16)

and KRS 620.230; or

(h) Fail to meet the mandated time frames for child protective services specified in 922 KAR 1:330;

(4) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050, Approval of adoption assistance;

(5) Denial of a request for a change in payment level due to a change in an adoptive parent's circumstances at the time of renewal of an adoption assistance agreement under 922 KAR 1:050, Approval of adoption assistance;

(6) Restriction of access to cabinet-sponsored resource home parent training ~~[that has been]~~ scheduled under 922 KAR 1:350, Family preparation;

(7) Except for the provisions of Section 3(1)(e),(f), and (g) of this administrative regulation, closure of a resource home under 922 KAR 1:350, Family preparation;

(8) Failure to respond with reasonable promptness to a ~~[.]~~ denial, reduction, suspension, or termination of a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 through 6;

(9) The following actions under 922 KAR 2:100, Certification of family child care homes:

- (a) Denial of certification;
- (b) An intermediate sanction;
- (c) Suspension of certification for a nonemergency situation; or
- (d) Revocation of certification;

(10) Denial or termination of a child care provider's registration under 922 KAR 2:180, Requirements for unregulated provider registration in the Child Care Assistance Program; or

(11) Any other matter by which state law or 922 KAR Chapters 1 through 6 expressly permit the appeal of a cabinet action or alleged act.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

- (a) A matter in which a court:
 - 1. Has previously made a judicial determination;
 - 2. Has issued an order on the same issue being appealed; or
 - 3. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause **for failure to go forward**;

(d) Failure to submit a written request for appeal within the time frame established by Section 6 of this administrative regulation;

(e) Removal of a foster child from a resource home if the resource home parent or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child; and

1. The resource home parent or other individual waived the right to appeal the substantiated incident; or

2. The substantiated incident was upheld after:

- a. An administrative hearing; or
- b. Judicial review;

(f) Removal of a child from a resource home for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140, Foster care and adoption permanency services; or

2. Reuniting the child with a sibling;

(g) Closure of a resource home if the cabinet has not placed a child in the home within the previous three (3) years; or

(h) Except when a payment or grant computation is incorrect, a situation by which state or federal law requires adjustment of a payment or grant.

(2) A complaint of discrimination may be filed with the cabinet's Equal Employment Office.

Section 4. [Customer] Service Complaints. (1) If a matter is not subject to review through an administrative hearing, an individual may:

(a) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed by that office; or

(b) Attempt to resolve the issue by submitting a written request

to the service region administrator or designee **within [no later than] thirty (30) calendar days after [from] the date of the cabinet action or alleged act.**

(2) The cabinet shall provide a written response within thirty (30) calendar days of receipt of a request for resolution of a matter not subject to review through an administrative hearing.

(3) A service region administrator or designee shall submit a monthly report to the commissioner or designee. **The report shall state [and include] the:**

- (a) Number of customer service complaints;
- (b) Nature of each complaint; and
- (c) Cabinet's written response **to each complaint.**

Section 5. Appeal of a Child Abuse or Neglect Investigative Finding. (1) An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing.

(2) The cabinet shall refer an **[each]** appeal of a **substantiation of [substantiated] child abuse or neglect [finding]** to the Office of Attorney General or cabinet designee for an administrative hearing conducted in accordance with KRS Chapter 13B.

(3) The proceedings of an administrative hearing related to the appeal of a substantiation of child abuse or neglect shall be disclosed only by authority of KRS 620.050(4).

Section 6. Request for Appeal. (1) **The cabinet shall provide a copy of the Service Appeal Request, form DPP-154, incorporated by reference, [shall be provided] to an individual:**

(a) Upon determining that the individual abused or neglected a child;

(b) At each case planning conference;

(c) Upon application for approval as a:

- 1. Resource home parent;
- 2. Certified family child care home provider; or
- 3. Registered child care provider;

(d) Upon denial, in whole or in part, reduction, modification, suspension, or termination of a:

- 1. Child welfare service;
- 2. General adult or protective service, if notification does not present a risk of harm to the victim;
- 3. Adoption subsidy payment;
- 4. Child care assistance program benefit; or
- 5. Other federally-funded program benefit described in **Title 922 KAR [under 922 KAR Chapters 1 through 6];** or

(e) Upon determination that a student is not eligible for a tuition waiver.

(2) **The cabinet shall hand-deliver or mail a Notice of Intended Action, form DPP-154A, incorporated by reference, [shall be hand delivered or mailed] at least ten (10) days prior to the denial, reduction, modification, suspension, or termination of a service.**

(3) **The cabinet may [Nothing herein shall restrict the cabinet's ability to] take emergency action under KRS 13B.125.**

(4) A request for appeal shall:

(a) **Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance; [Be in writing. If an appellant is unable to submit a request in writing, the cabinet or contract agency shall provide assistance to ensure submission of a written request];**

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

- 1. ~~[From the date;~~
 - a.] That the DPP-154A was issued;
 - 2. **[b.] Of the occurrence of the disputed action;** or
 - 3. **Of [2- Upon] receipt of notification of a cabinet substantiated finding of child abuse or neglect;**

(c) **Describe [Provide a description of] the:**

- 1. Cabinet action in dispute; or
- 2. Alleged act;

(d) Specify:

1. The reason the **appellant disputes [individual disagrees with] the cabinet's action;**

2. If known, name of each cabinet staff person involved with the disputed action; and

(e) Include the date of the:

1. Cabinet action in dispute; or
2. Alleged act.

(5) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject for review through an administrative hearing. If the matter is not subject for review, the cabinet shall inform the individual that the:

(a) Matter is not appealable; and

(b) Resolution of the matter may be pursued through the [customer] service complaint process described in Section 4 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the DPP-154A was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 CFR 205.10(a)(6) pending the outcome of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification includes:

(a) Inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the failure to file or participate was not the fault of the individual.

Section 7. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or designee shall be held in accordance with KRS Chapter 13B.

(2) Final administrative action shall be taken within ninety (90) days from the date of the request for a hearing, as required by [in accordance with] 45 CFR 205.10.

Section 8. Contract Agencies. (1) A contract agency shall offer a service appeal process consistent with the requirements of this administrative regulation.

(2) An individual [if an individual is] dissatisfied with a final written decision rendered by a contract agency [upon completion of the agency's service appeal process, the individual] may request that the cabinet review the complaint and the final decision. A request for review shall be submitted to the cabinet within ten (10) days from the date of the contract agency's final decision. Upon completion of the review, the commissioner or designee shall render a written recommendation regarding the complaint. The agency shall abide by the recommendation.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DPP-154, Service Appeal Request, edition June 2002"; and
- (b) "DPP-154A, Notice of Intended Action, edition June 2002".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ["Applicant for services" means a person who has applied for services relating to protection and permanency from the Department for Community Based Services by means of signing an application.

(2) "Client" means a recipient or a person who has been determined to be eligible to receive protection and permanency services from the Department for Community Based Services and has been registered in a case to receive ongoing services or a person who has been ordered by a court to receive protection and permanency services from the Department for Community Based Services.

(3) "Complainant" means the applicant for services, client, foster parent, adoptive parent, or individual identified as a substantiated perpetrator of child abuse or neglect pursuant to 42 USC 5046a, who after submitting their written complaint, is entitled to a fair hearing.

(4) "Hearing officer" means a person who is trained in administrative hearing procedures designated by the Secretary of the Cabinet for Families and Children or designee to conduct fair hearings.

(5) "Local resolution process guidelines" means the local resolution conference consisting of an informal process that gives the complainant the opportunity to discuss his complaint and clarify issues and attempt to resolve those issues. The complainant shall be afforded the opportunity to decide whether he continues to desire a formal hearing following the local resolution process.

(6) "Timely" means that a notice is mailed at least ten (10) days

before the date of the action, except that adequate written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the children or that the health or well-being of children may be endangered if prior notice is given.

Section 2. Right to a Fair Hearing. (1) The department shall not on the basis of race, color, national origin, sex, age, religion or disability:

(a) Deny an individual aid, care, services or other benefits of the department, either directly or through contractual or other agreements.

(b) Provide aid, care, services, or other benefits to an individual which is different or is provided in a different manner from that provided to others.

(c) Subject an individual to segregation or separate treatment in a matter related to his receipt of aid, care, services or other benefits.

(d) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services or other benefits.

(e) Treat an individual differently from others in determining whether he satisfies eligibility or other requirements or conditions which individuals shall meet to receive aid, care, services or other benefits.

(f) Deny an individual an opportunity to participate in the program through the provision of services or afford him an opportunity to do so which is different from that afforded others.

(2) A notice of the individual's right to a hearing shall be displayed prominently in each Department for Community Based Services, clinical programs, day treatment center, group home, and in each Department for Community Based Services office in a location easily accessible to clients. The notice of right to a hearing shall state:

(a) If you are dissatisfied with the action taken, you may request a fair hearing within thirty (30) days from the date of the action by filing a written request or a DSS-154, Service Complaint form, incorporated by reference herein, with the Quality Assurance Section, Office of Performance Enhancement.

(b) You may be represented by an attorney or other spokesman.

(3) Staff of the Department for Community Based Services who provide protection and permanency services, shall have the responsibility of advising applicants, clients, foster parents, subsidized adoptive parents, and individuals identified as substantiated perpetrators under 42 USC 5106a in writing of their right to a fair hearing:

(a) During intake or the initial treatment planning conference, using the DSS-154, Service Complaint form.

(b) During any action affecting services or assistance:

1. Staff shall give the applicant, client or subsidized adoptive parent timely and adequate notice and an opportunity to object, using the DSS-154A, Notice of Intended Action form.

2. If a service complaint is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of a child; and

(c) Staff shall give new foster parents, upon approval, a written notice of their right to a fair hearing when:

1. A foster home is closed;

2. A child is removed from one (1) foster home to another foster home; and

3. Training relating to protection and permanency, provided by the department is denied.

(4) Hearing entitlement.

(a) An applicant or client shall be entitled to a hearing on the following actions:

1. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;

2. Dissatisfaction with a service received, inappropriate or inadequate treatment, placement or visitation;

3. Failure of the department to act upon a request for service relating to protection and permanency with reasonable promptness;

4. Failure of the department to take into account a client's choice of service or a determination that the individual shall participate in a service program relating to protection and permanency against his

wishes except where required by law; or

~~5. Discrimination against a client by department staff, who provide protection and permanency services, on account of age, sex, race, national origin, disability or religion.~~

~~(b) A foster parent shall be entitled to a hearing on the following decisions:~~

~~1. Removal of a foster child from one (1) foster home to another foster home except if the child has been the subject of a substantiated report of abuse or neglect by the foster parents and the foster parents have appealed such findings in accordance with 42 USC 5106a;~~

~~2. Denial of foster parents' access to foster parent training provided and scheduled by the department;~~

~~3. Closure of the foster home;~~

~~4. Sexual abuse or sexual exploitation by the foster parents is substantiated;~~

~~5. Substantiation of physical abuse of a child warranting the removal of the victim;~~

~~6. Neglect by the foster parents is substantiated and the foster parents have appealed such findings in accordance with 42 USC 5106a;~~

~~(c) Foster parents are not entitled to a fair hearing if:~~

~~1. There is presence of a serious physical or mental illness which impairs or precludes adequate care of the child by the foster parents;~~

~~2. Foster parents are convicted of a felony offense; or~~

~~3. Foster parents have not had a placement within five (5) years of the approval date.~~

~~(d) Subsidized adoptive parents shall be entitled to a hearing on the decision to deny or reduce adoptive assistance for a special needs child. Adoptive parents eligible for adoption assistance for a special needs child pursuant to 42 USC 671 et seq. are entitled to a hearing for:~~

~~1. Failure of the department staff who provide protection and permanency services to advise the adoptive parents of the availability of the adoption assistance for special needs children; and~~

~~2. Failure to provide eligible adoptive parents known relevant facts regarding the child, biological family and child's background prior to finalization.~~

~~(5) Individuals who are found to be substantiated perpetrators of child abuse or neglect shall be given certified notification of their right to appeal the findings of the investigation.~~

~~(6) The following issues shall not be considered through the hearing procedure described herein:~~

~~(a) Complaints related to legal issues, for example, actions involved in court cases or the interpretation of any statute or regulation;~~

~~(b) Any complaint related to a court case involving an individual found by the Cabinet for Families and Children to be a substantiated perpetrator of child abuse or neglect, where evidence to support the substantiation of child abuse or neglect has been presented and the court has not made findings that the individual did not commit child abuse or neglect;~~

~~(c) A complaint that has not been filed in writing with the Quality Assurance Section;~~

~~(d) A complaint that has been abandoned by failure of the complainant to carry forward with their complaint, to furnish information requested by the hearing officer or to appear at a scheduled hearing;~~

~~(e) A client complaint involving services or discrimination against a contract agency;~~

~~(f) Discrimination practices in relation to departmental personnel policies and procedures regarding protection and permanency services. These grievances shall be handled per instructions in the personnel manual; and~~

~~(g) A report or investigation of child abuse or neglect, where the abuse or neglect was found to be unsubstantiated or when the findings are substantiated, but the perpetrator does not request a fair hearing.~~

~~Section 3. Service Complaint. (1) The complainant or legal guardian shall sign the complaint and submit it to the Quality Assurance Section. Upon request, departmental staff who provide protection and permanency services shall assist individuals in preparation~~

~~and submission of a service complaint form. Staff shall not assume responsibility for mailing the service complaint form. Complaints shall be in writing or filed on the DSS 154, Service Complaint form and contain:~~

~~(a) Specific allegations or complaints against the department staff responsible for providing protection and permanency services;~~

~~(b) Name of the staff person, or persons involved if known;~~

~~(c) Circumstances under which the alleged act occurred; and~~

~~(d) Date and place of alleged act.~~

~~(2) Complaints shall be filed in writing within thirty (30) days after the alleged act or notice of a decision affecting services or notice that a complaint of child abuse or neglect has been substantiated. If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery. If the complaint is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Commissioner of the Department for Community Based Services, or designee.~~

~~(a) Within five (5) working days of the receipt of the complaint, the Quality Assurance Section shall notify:~~

~~1. The complainant of the receipt of the request and the department's policy of attempts at local resolution before a hearing is scheduled;~~

~~2. The appropriate service region administrator or designee of the receipt of the complaint and asked to set a meeting with the complainant to attempt to resolve the issues that led to the complaint.~~

~~(b) The local resolution facilitator contacts the complainant to:~~

~~1. Clarify the issues of the complaint;~~

~~2. Determine if the complainant wishes to participate in the local resolution process; and~~

~~3. Determine if the complainant is a client or a person filing on behalf of a client. If the complainant is not a client, notify the Quality Assurance Section supervisor immediately.~~

~~(c) The complainant may refuse to participate in the local resolution efforts and shall sign an acknowledgement to be forwarded to the Quality Assurance Section supervisor and choose:~~

~~1. To request that the complaint be withdrawn; or~~

~~2. That the complaint be referred for a formal fair hearing.~~

~~(d) If the complainant chooses to be involved in the local resolution process, the local resolution facilitator shall solicit information from the involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include:~~

~~1. Interviews with the complainant and named Department for Community Based Services staff;~~

~~2. Interviews with other involved parties; and~~

~~3. A review of relevant case materials.~~

~~(e) Other issues identified as a result of the local resolution conference shall be brought to the attention of appropriate management and supervisory staff.~~

~~(3) The service region administrator or his designee shall forward to the Quality Assurance Section, in writing, the results of their efforts to achieve local resolution of the complaint not more than thirty (30) days after the filing of the service complaint. The report shall contain the information necessary to document the complainant's satisfaction with the resolution of his complaint or, if the complaint is not resolved, information necessary to move the complaint to the next level.~~

~~(4) If the complaint is resolved, the complainant shall sign an acknowledgment to that effect. A copy of the local resolution report shall be sent to the complainant and involved staff.~~

~~Section 4. Hearing Before the State Agency. (1) If a complaint is not resolved within thirty (30) days after filing, it shall be referred to a hearing officer of the Quality Assurance Section to conduct a hearing. The hearing shall be held within sixty (60) days after referral. If the complainant agrees to an extension of time, the time for final administrative action shall be correspondingly extended.~~

~~(2) The hearing shall be conducted at a reasonable location selected by the hearing officer.~~

~~(3) The complainant and representatives, as appropriate, the Department for Community Based Services staff involved in the complaint and their representatives, and Cabinet Office of the General Counsel shall be given twenty (20) days written notice prior to~~

the hearing. The hearing officer's notice shall comply with KRS 13B.050(2)(3). The following additional information shall be contained in the hearing officer's notice to the complainant and his representative and staff named in the complaint:

(a) The complainant shall be asked to notify the hearing officer in writing within five (5) working days of the receipt of the notice if the complaint issues have not been correctly stated. The hearing officer shall then make a determination as to whether to modify the complaint issues;

(b) Individuals to be present at the hearing;

(c) That the department shall not be responsible for any legal fees incurred by the complainant related to the hearing;

(d) The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross-examine opposing witnesses; and

(e) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law as governed by KRS 61.870 to 61.884.

(4) Attendance at the hearing shall be limited to:

(a) The complainant and representatives;

(b) Staff involved in the complaint and their representatives;

(c) The department's attorney;

(d) A representative of the department;

(e) A person to operate the recording equipment;

(f) Witnesses called by either the complainant or staff; and

(g) The hearing officer.

(5) The hearing shall be conducted as governed by KRS 13B.090 and 13B.091. Facts relevant to the issue shall be received.

(a) The hearing officer shall open the hearing by:

1. Describing the purpose of the hearing;

2. Explaining the role of the hearing officer; and

3. Introducing parties to the hearing.

4. The hearing officer may direct or grant a continuance for good cause shown.

5. The hearing officer shall carefully clarify the complaint issues to be heard with the parties to the hearing. The complaint issues shall be the same as those in the written notification of the hearing.

(b) The hearing officer shall arrange for the separation of witnesses. Only the client and representatives; staff involved in the complaint and their representatives; the department's attorney; a representative of the department; the hearing officer; and a person to operate the recording equipment are entitled to be in the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate.

(c) Burden of proof shall be assigned in accordance with KRS 13B.000(7).

(d) The hearing officer may, if necessary to secure full information on the issue:

1. Postpone the hearing;

2. Examine each party who appears, and his witnesses; and

3. Take any additional evidence which he deems necessary including excerpts from the case record.

(e) The hearing officer shall advise the parties that a decision shall be rendered within thirty (30) days from the close of the hearing.

(f) Ex parte communications with the hearing officer shall be prohibited. Ex parte communications with the hearing officers shall be shared with the parties to the hearing and become a part of the official record.

Section 5. Hearing Officer's Recommended Order. (1) Within ten (10) days after the close of the hearing, the hearing officer shall file a recommended order with the Quality Assurance Section. The order shall comply with KRS 13B.110 and at least contain:

(a) Statement of the complaint;

(b) Persons present at the hearing, including witnesses;

(c) Findings of fact based solely on the evidence introduced at the hearing;

(d) Conclusions of law as to whether or not the findings support the complaint, citing appropriate policy, procedures and practices in a recommended decision on the issues;

(e) Recommendations as to action to be taken on the complaint;

(f) Directions for the filing of exceptions; and

(g) Other issues identified by the hearing officer shall be addressed separately.

(2) Each party to the hearing shall have fifteen (15) days from date of recommended order to file exceptions.

(3) Within twenty (20) days after receipt of the hearing officer's recommended order by the Quality Assurance Section, the commissioner, or designee, shall render a final order on the complaint. The final order shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall comply with KRS Chapter 13B.120 and at least contain the following information:

(a) Statement of the complaint;

(b) Findings of fact and conclusion of law with applicable statutes, policies, procedures and practices in regard to the complaint;

(c) Decision and action to be taken based on findings of fact; and

(d) Statement of appeal rights.

Section 6. Corrective Action. After reviewing the findings of fact and conclusions of law and recommendations of the hearing officer, if the commissioner or the commissioner's designee feels that corrective action is warranted, a memorandum shall be forwarded to the Director for the Division of Protection and Permanency requesting that corrective action be initiated. Corrective actions deemed necessary shall be initiated within ten (10) days.

Section 7. Record. The record of each administrative hearing shall comply with KRS 13B.130 and shall be available at the Frankfort office of the Quality Assurance Section at any reasonable time in accordance with open records. The record of the fair hearing shall be maintained in a locked file separate from the case record of the complainant.

Section 8. Contract Agencies. (1) Contract agencies of the department shall follow procedures outlined in this administrative regulation if a client has a complaint related to civil rights, discrimination or service delivery. If the complainant is dissatisfied with the written decision rendered by the contract agency, the client has ten (10) days from the date of the agency's decision to appeal. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal shall be mailed to the office of the commissioner.

(2) The commissioner shall forward the appeal of the decision to the Quality Assurance Section to be reviewed by a hearing officer. After reviewing the decision made by the contract agency, the hearing officer shall file a written report with the commissioner which shall contain:

(a) Conclusions as to whether the contract agency's finding support the complaint, citing appropriate policy and procedure; and

(b) Recommendations as to action to be taken on the complaint.

(3) After receipt of the hearing officer's report, the commissioner or the commissioner's designee shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:

(a) Statement of the appeal; and

(b) Decision and action to be taken.

Section 9. Incorporated by Reference. (1) DCBS-154, "Service Complaint Form", July, 1998, Cabinet for Families and Children, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner

HIREN DESAI, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 25, 2002

FILED WITH LRC: March 27, 2002 at 4 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 14, 2002

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Legal Services
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (19)
164.753(2), 34 CFR 682.410(b)(10), 20 USC 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20
USC 1095(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 USC 1071 through 1087-2. 20 USC 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 USC 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(19) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(10) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;

(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accor-

dance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding; or

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;

2. Any prehearing order;

3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:

1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
- 2.a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;
- b. Reject or modify, in whole or in part, the hearing officer's decision; or
- c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:
 - (i) In violation of constitutional or statutory provisions;
 - (ii) In excess of the statutory authority of the agency;
 - (iii) Without support of substantial evidence on the whole record;
 - (iv) Arbitrary, capricious, or characterized by abuse of discretion;

(v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

(4) The remedies provided in this section shall not:

- (a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and
- (b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:

- a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
- b. Discuss the possibility of informal resolution of the dispute;
- c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and
- d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3.a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in subsection (2) of this section.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d)1. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

or

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Noncompliance with the requirements of this subsection, including failure of the authority to timely appoint a hearing officer or respond to a request for inspection of records or failure of the debtor to submit information in accordance with paragraph (b) of this subsection in a timely manner sufficient to permit the debtor, the authority, or the hearing officer to timely perform his obligations shall be sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;
3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;
5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

1. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:

- a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
- b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:

- a. Statutes and administrative regulations;
- b. Facts which are not in dispute; and
- c. Generally-recognized technical or scientific facts;

2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and

3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a

prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:

1. Consider the matter; and

2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:

1. Circumstances have changed or new information is available;

or

2. The prior decision:

- a. Substantially disregarded or ignored the defense; or

- b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 CFR 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 20 USC 523(a)(8)(B), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

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(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$8,860
2	\$11,940
3	\$15,020
4	\$18,100
5	\$21,180
6	\$24,260
7	\$27,340
8	\$30,420
Each additional person	Add \$3,080

{Size of family unit	Poverty guideline
1	\$8,590
2	\$11,610
3	\$14,630
4	\$17,650
5	\$20,670
6	\$23,690
7	\$26,710
8	\$29,730
Each additional person	Add \$3,020

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$11,080
2	\$14,930
3	\$18,780
4	\$22,630

5	\$26,480
6	\$30,330
7	\$34,180
8	\$38,030
Each additional person	Add \$3,850

{Size of family unit	Poverty guidelines
1	\$10,730
2	\$14,510
3	\$18,290
4	\$22,070
5	\$25,850
6	\$29,630
7	\$33,410
8	\$37,190
Each additional person	Add \$3,780

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guidelines
1	\$10,200
2	\$13,740
3	\$17,280
4	\$20,820
5	\$24,360
6	\$27,900
7	\$31,440
8	\$34,980
Each additional person	Add \$3,540

{Size of family unit	Poverty guidelines
1	\$9,890
2	\$13,360
3	\$16,830
4	\$20,300
5	\$23,770
6	\$27,240
7	\$30,710
8	\$34,180
Each additional person	Add \$3,470

2.a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than	\$5,000	\$10,000	\$15,000	\$20,000	\$30,000	\$40,000	\$50,000	\$70,000
	\$5,000	to \$9,999	to \$14,999	to \$19,999	to \$29,999	to \$39,999	to \$49,999	to \$69,999	and over
Annual Expenditures									
Owned dwelling	1,749	1,267	2,420	2,494	2,851	3,971	4,459	6,356	11,819
Rented dwelling	2,452	2,382	2,471	2,612	2,785	2,757	3,221	2,110	1,837
Other lodging	258	160	173	194	302	309	375	550	1,173
Utilities, fuels, and public services	1,424	1,429	1,883	2,053	2,221	2,396	2,472	2,830	3,662
Household services	256	218	258	356	360	370	461	606	1,733
Housekeeping and miscellaneous supplies	218	185	380	352	489	476	549	728	1,091
Household furnishing and equipment	842	442	819	887	1,087	1,242	1,540	1,734	3,440
Vehicle purchases (net outlay)	792	925	2,007	1,046	1,910	3,720	3,217	3,473	4,094
Gasoline and motor oil	542	316	501	532	811	1,028	1,096	1,394	1,613

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Vehicle maintenance and repairs	305	235	303	497	552	538	617	731	1,134
Vehicle insurance	370	261	403	495	680	836	833	1,071	1,405
Vehicle lease, license and other charges	282	118	187	152	352	464	484	717	1,409
Public transportation	399	239	318	420	439	540	506	546	1,134

Debtor's Available Resources	Less Than	\$5,000 to	\$10,000 to	\$15,000 to	\$20,000 to	\$30,000 to	\$40,000 to	\$50,000 to	\$70,000 and over
	\$5,000	\$9,999	\$14,999	\$19,999	\$29,999	\$39,999	\$49,999	\$69,999	
Annual Expenditures									
Owned dwelling	1,570	1,081	2,256	2,351	3,065	3,891	4,657	6,792	11,622
Rented dwelling	2,717	2,447	2,577	2,901	2,492	2,919	2,666	2,108	1,808
Other lodging	150	168	306	243	304	287	405	603	1,314
Utilities, fuels, and public services	1,304	1,371	1,806	1,964	2,253	2,362	2,541	2,832	3,550
Household services	226	176	294	337	318	330	490	597	1,467
Housekeeping and miscellaneous supplies	182	219	326	308	439	463	548	745	938
Household furnishings and equipment	741	524	988	1,008	996	1,297	1,542	1,936	3,468
Vehicle purchases (net outlay)	1,121	934	1,220	1,149	1,646	2,655	3,499	4,040	4,828
Gasoline and motor oil	433	328	450	533	681	905	1,045	1,274	1,493
Vehicle maintenance and repairs	222	240	325	585	587	616	639	827	1,056
Vehicle insurance	278	272	432	522	638	849	873	1,099	1,489
Vehicle lease, license and other charges	137	157	205	233	355	419	482	705	1,293
Public transportation	349	187	327	370	391	562	578	498	1,155

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	New York	Philadelphia	Boston	Pittsburgh
Owned dwellings	6,634	6,107	5,455	3,420
Rented dwellings	3,697	1,688	2,636	1,421
Other lodging	630	660	543	452
Utilities, fuels, and public services	2,687	2,864	2,362	2,490
Household services	915	616	667	383
Housekeeping and miscellaneous supplies	544	533	384	675
Household furnishings and equipment	1,731	1,767	1,315	1,610
Vehicle purchases (net outlay)	2,607	2,879	2,808	2,505
Gasoline and motor oil	982	931	965	1,026
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,513	2,576	2,214	2,465
Public transportation	900	487	599	363

	New York	Philadelphia	Boston	Pittsburgh
Owned dwellings	6,403	6,615	6,110	3,080
Rented dwellings	3,544	1,875	2,396	1,587
Other lodging	606	749	973	278
Utilities, fuels, and public services	2,592	2,841	2,419	2,426
Household services	758	518	667	397
Housekeeping and miscellaneous supplies	497	477	363	688
Household furnishings and equipment	1,781	1,709	1,684	1,535
Vehicle purchases (net outlay)	2,655	3,865	2,645	2,443
Gasoline and motor oil	877	869	923	862
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,523	2,706	2,143	2,184
Public transportation	917	457	600	307

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than	\$5,000 to	\$10,000 to	\$15,000 to	\$20,000 to	\$30,000 to	\$40,000 to	\$50,000 to	\$70,000 and over
	\$5,000	\$9,999	\$14,999	\$19,999	\$29,999	\$39,999	\$49,999	\$69,000	
Annual Expenditures									
Owned dwelling	1,480	1,010	1,801	1,955	2,588	3,605	4,537	6,206	9,724

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Rented dwellings	1,634	1,792	1,728	2,185	1,874	1,916	1,693	1,278	869
Other lodging	380	96	190	238	314	275	352	570	1,190
Utilities, fuels and public services	1,273	1,582	1,878	1,980	2,219	2,365	2,525	2,833	3,439
Household operations services	442	288	363	326	386	286	576	800	1,574
Housekeeping and miscellaneous supplies	230	240	296	388	451	473	597	783	978
Household furnishings and equipment	622	444	824	824	1,107	1,320	1,868	2,140	3,378
Vehicle purchases (net outlay)	1,548	1,313	2,178	2,275	2,882	3,234	3,933	4,903	6,050
Gasoline and motor oil	739	435	663	864	1,010	1,203	1,381	1,635	1,894
Vehicle maintenance and repairs	363	277	337	440	491	596	730	839	1,018
Vehicle insurance	244	260	454	517	663	776	865	1,023	1,252
Vehicle lease, license, and other charges	235	112	170	260	338	568	619	631	1,312
Public transportation	98	121	174	283	305	297	335	436	844

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
	Annual Expenditures								
Owned dwelling	1,407	968	1,806	1,916	2,603	3,433	4,191	5,743	9,643
Rented dwellings	1,582	1,755	1,660	2,132	1,804	1,852	1,649	1,422	733
Other lodging	357	91	209	203	262	230	355	541	1,140
Utilities, fuels, and public services	1,257	1,595	1,843	1,953	2,185	2,350	2,510	2,820	3,356
Household operations services	207	225	321	248	272	320	513	852	1,494
Housekeeping and miscellaneous supplies	224	206	284	342	416	510	606	746	963
Household furnishings and equipment	857	460	717	978	1,152	1,264	1,653	2,110	3,275
Vehicle purchases (net outlay)	1,941	641	2,241	1,946	2,504	2,919	3,172	4,188	5,717
Gasoline and motor oil	600	393	586	726	906	1,407	1,259	1,444	1,621
Vehicle maintenance and repairs	330	243	416	441	482	609	774	886	1,082
Vehicle insurance	385	216	451	519	605	772	804	1,043	1,163
Vehicle lease, license, and other charges	145	106	124	257	354	449	597	824	1,285
Public transportation	451	401	464	293	210	256	317	319	901

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Chicago	Detroit	Milwaukee	Minneapolis St. Paul	Cleveland	Cincinnati	St. Louis	Kansas City
Annual Expenditures								
Owned dwelling	6,330	5,608	5,378	6,425	5,247	4,620	4,627	4,603
Rented dwelling	2,239	1,618	2,541	2,121	1,435	2,292	1,412	1,683
Other lodging	827	478	414	739	474	497	373	320
Utilities, fuels, and public services	2,796	2,637	2,271	2,414	2,584	2,411	2,668	2,645
Household services	762	697	686	1,041	463	796	795	549
Housekeeping and miscellaneous supplies	535	651	491	670	570	587	388	454
Household furnishings and equipment	1,833	2,157	1,533	2,226	1,795	1,545	1,294	1,259
Vehicle purchases (net outlay)	3,374	2,871	3,369	3,312	4,253	3,872	4,345	3,824
Gasoline and motor oil	1,120	1,268	1,129	1,348	1,073	1,117	1,105	1,341
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,193	3,093	2,081	2,906	2,506	2,601	2,038	2,403
Public transportation	731	403	438	736	445	320	462	321

	Chicago	Detroit	Milwaukee	Minneapolis St. Paul	Cleveland	Cincinnati	St. Louis	Kansas City
Annual Expenditures								
Owned dwelling	5,625	5,474	5,540	6,063	4,925	4,331	4,539	4,194
Rented dwelling	2,238	1,668	2,326	2,029	1,469	2,153	1,589	1,979
Other lodging	545	457	383	719	547	449	308	366
Utilities, fuels, and public services	2,647	2,607	2,277	2,284	2,523	2,341	2,681	2,597
Household services	520	673	590	1,003	410	797	745	619
Housekeeping and miscellaneous supplies	567	558	500	659	554	433	328	378

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Household furnishings and equipment	1,590	1,582	1,531	2,217	1,515	1,568	1,115	1,290
Vehicle purchases (net outlay)	2,779	2,854	3,643	4,175	3,471	3,108	3,582	3,948
Gasoline and motor oil	928	1,054	1,022	1,172	916	1,029	970	1,155
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	1,958	2,140	2,140	2,891	2,304	2,388	2,168	2,383
Public transportation	568	466	466	640	442	332	294	303

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Owned dwelling	1,278	1,068	1,457	1,796	2,345	2,969	3,556	5,110	9,401
Rented dwelling	1,750	1,609	1,754	1,830	2,037	2,072	2,152	1,532	1,027
Other lodging	251	69	86	154	210	322	328	452	1,202
Utilities, fuels, and other charges	1,576	1,685	1,986	2,154	2,357	2,505	2,742	2,992	3,647
Household services	249	159	311	301	406	478	545	958	1,767
Housekeeping and miscellaneous supplies	183	253	261	309	411	514	559	716	878
Household furnishings and equipment	472	442	601	809	1,106	1,313	1,567	2,116	3,144
Vehicle purchases (net outlay)	1,487	1,032	2,203	2,272	2,546	3,265	4,734	5,254	7,083
Gasoline and motor oil	648	504	725	885	1,058	1,318	1,480	1,622	1,901
Vehicle maintenance and repairs	298	238	410	487	534	726	823	783	1,105
Vehicle insurance	413	257	410	543	688	812	948	1,033	1,205
Vehicle lease, license, and other charges	119	83	141	188	228	269	359	588	972
Public transportation	124	100	100	120	207	207	263	390	795

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Owned dwelling	1,215	1,091	1,415	1,580	2,263	2,972	3,570	4,992	9,065
Rented dwelling	1,921	1,548	1,649	1,884	1,983	2,057	2,022	1,447	871
Other lodging	211	78	138	137	170	304	342	460	1,153
Utilities, fuels, and other charges	1,571	1,696	1,935	2,080	2,321	2,446	2,703	2,961	3,628
Household services	181	261	255	243	410	450	572	856	1,540
Housekeeping and miscellaneous supplies	178	266	274	310	385	489	545	677	870
Household furnishings and equipment	410	578	589	874	1,233	1,395	1,552	2,197	3,019
Vehicle purchases (net outlay)	1,673	904	1,849	2,509	2,690	3,089	4,365	5,672	7,083
Gasoline and motor oil	579	458	678	792	980	1,153	1,335	1,429	1,681
Vehicle maintenance and repairs	366	244	363	500	534	805	765	873	1,201
Vehicle insurance	359	231	397	503	663	749	955	1,013	1,256
Vehicle lease, license, and other charges	85	81	115	183	217	310	347	546	929
Public transportation	98	118	130	121	204	192	299	424	791

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Washington, D.C.	Baltimore	Atlanta	Miami	Tampa	Dallas Fort Worth	Houston
Owned dwelling	6,779	6,133	5,722	5,817	4,042	4,873	4,397
Rented dwelling	2,918	1,558	2,143	2,654	1,761	2,855	2,446
Other lodging	1,001	632	390	315	478	359	494
Utilities, fuels, and public services	2,639	2,483	3,055	2,768	2,576	3,041	2,929
Household services	969	610	803	1,009	714	962	1,005
Housekeeping and miscellaneous supplies	516	699	364	454	436	559	597
Household furnishings and equipment	2,157	1,664	1,188	1,516	1,250	1,690	2,002
Vehicle purchases (net outlay)	3,222	3,214	3,194	3,023	4,130	4,441	4,813
Gasoline and motor oil	1,195	1,172	1,128	1,250	1,102	1,469	1,442
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,526	2,285	2,426	2,756	2,140	2,624	2,988

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Public transportation	871	513	309	433	379	415	478
	Washington D.C.	Baltimore	Atlanta	Miami	Tampa	Dallas Fort Worth	Houston
Annual Expenditures							
Owned dwelling	6,501	5,756	5,397	5,380	3,836	4,304	4,123
Rented dwelling	3,052	4,784	2,230	2,744	4,873	2,662	2,572
Other lodging	920	629	508	349	550	302	474
Utilities, fuels, and public services	2,640	2,356	3,053	2,723	2,457	2,009	2,882
Household services	845	606	793	4,047	639	798	762
Housekeeping and miscellaneous supplies	473	664	340	407	449	538	489
Household furnishings and equipment	1,984	4,697	4,447	4,372	4,240	4,624	4,809
Vehicle purchases (net outlay)	3,044	2,804	3,844	2,840	2,602	3,687	5,039
Gasoline and motor oil	1,040	1,042	4,074	1,085	900	4,272	4,243
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,463	2,400	2,824	3,054	2,074	2,468	2,853
Public transportation	755	435	346	446	444	407	435

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,000	\$30,000 to \$39,999	\$40,000 to \$49,000	\$50,000 to \$69,999	\$70,000 and over
	Annual Expenditures								
Owned dwelling	1,292	1,203	1,777	2,006	2,855	4,349	5,408	6,925	12,084
Rented dwelling	2,959	2,499	3,053	3,050	3,221	3,440	3,604	2,479	1,773
Other lodging	705	288	216	255	270	276	341	510	1,456
Utilities, fuels, and public services	1,189	1,249	1,592	1,792	1,865	2,180	2,362	2,607	3,169
Household services	247	197	355	727	465	422	784	841	2,148
Housekeeping and miscellaneous supplies	270	246	313	382	406	497	570	687	889
Household furnishings and equipment	898	581	813	869	1,136	1,230	1,695	2,701	3,962
Vehicle purchases (net outlay)	849	943	1,595	2,547	2,580	3,148	4,507	3,239	7,111
Gasoline and motor oil	623	595	722	955	1,084	1,291	1,417	1,676	2,000
Vehicle maintenance and repairs	353	353	635	557	709	760	891	931	1,359
Vehicle insurance	272	290	441	561	714	828	919	1,091	1,327
Vehicle lease, license, and other charges	330	223	211	297	340	479	659	828	1,508
Public transportation	271	272	290	267	290	397	409	597	1,108

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,000	\$30,000 to \$39,999	\$40,000 to \$49,000	\$50,000 to \$69,999	\$70,000 and over
	Annual Expenditures								
Owned dwelling	4,195	4,234	4,956	2,740	4,072	5,064	6,954	6,951	12,249
Rented dwelling	2,736	2,466	3,220	3,354	3,284	3,445	2,228	2,228	4,707
Other lodging	327	486	284	282	290	385	506	506	1,652
Utilities, fuels, and public services	4,127	4,239	4,734	4,907	2,124	2,283	2,572	2,572	3,283
Household services	250	271	347	627	440	447	694	585	2,467
Housekeeping and miscellaneous supplies	255	227	377	394	424	502	558	779	870
Household furnishings and equipment	775	544	665	895	1,164	1,487	1,583	2,340	4,040
Vehicle purchases (net outlay)	500	4,066	4,532	4,960	2,600	2,804	3,382	3,525	6,394
Gasoline and motor oil	509	470	648	832	964	4,144	4,244	4,524	4,754
Vehicle maintenance and repairs	334	294	595	468	720	771	903	1,042	1,295
Vehicle insurance	347	265	423	616	722	820	905	4,074	1,355
Vehicle lease, license, and other charges	255	435	494	263	326	508	680	893	4,636
Public transportation	493	302	499	246	396	387	384	614	4,249

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

	Los Angeles	San Francisco	San Diego	Portland	Seattle	Honolulu	Anchorage	Phoenix	Denver
Owned dwelling	5,958	8,266	6,423	6,100	5,781	5,704	6,360	4,974	5,910
Rented dwelling	3,828	3,963	4,102	2,359	2,896	3,404	3,264	2,341	2,916

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Other lodging	507	734	471	636	812	610	1,096	478	1,284
Utilities, fuels, and public services	2,290	2,226	2,104	2,344	2,225	2,113	2,485	2,599	2,311
Household services	1,429	1,477	1,013	812	660	630	900	577	794
Housekeeping and miscellaneous supplies	481	595	479	451	636	497	738	538	473
Household furnishings and equipment	2,056	2,421	2,419	1,953	1,634	1,127	2,661	1,616	2,084
Vehicle purchases (net outlay)	2,933	4,409	5,323	3,304	2,766	1,553	4,276	4,223	3,257
Gasoline and motor oil	1,383	1,424	1,349	1,248	1,300	1,071	1,334	1,118	1,196
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,924	2,992	2,684	2,658	2,657	2,101	3,172	2,965	3,141
Public transportation	461	900	625	590	679	1,050	1,030	552	746

	Los Angeles	San Francisco	San Diego	Portland	Seattle	Honolulu	Anchorage	Phoenix	Denver
Annual Expenditures									
Owned dwelling	5,805	7,377	6,105	5,568	6,160	6,152	6,163	4,694	6,148
Rented dwelling	3,674	3,848	3,756	2,604	2,464	3,403	3,367	2,538	2,296
Other lodging	612	694	600	539	766	520	993	496	1,342
Utilities, fuels, and public services	2,267	2,193	1,977	2,460	2,263	2,032	2,644	2,458	2,200
Household services	1,256	1,128	990	675	666	513	957	669	860
Housekeeping and miscellaneous supplies	469	620	544	506	693	554	700	479	482
Household furnishings and equipment	1,856	2,232	2,327	1,799	1,890	1,497	2,573	1,562	2,147
Vehicle purchases (net outlay)	469	3,164	3,988	4,123	2,867	999	3,812	4,035	3,116
Gasoline and motor oil	1,856	1,232	1,177	1,103	1,216	1,060	1,300	1,016	1,107
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,860	2,954	2,748	2,373	2,843	2,262	3,194	2,697	3,380
Public transportation	558	836	637	519	725	1,033	981	464	634

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	1,877	1,880	2,294	2,666	2,985	3,591	4,121	4,352	5,692
Apparel	550	577	582	874	1,129	1,418	1,706	1,687	3,900
Health insurance	261	643	884	728	646	521	693	544	825
Medical services	215	228	453	451	417	401	550	693	766
Prescription drugs	132	370	522	405	346	238	264	328	346
Medical supplies	23	69	90	69	65	53	95	105	114
Personal care products and services	215	241	309	348	373	453	447	513	630
Education	1,159	457	232	290	279	269	326	468	815
Life and other personal insurance	47	93	105	150	179	154	199	292	505

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,000	\$20,000 to \$29,999	\$30,000 to \$39,000	\$40,000 to \$49,999	\$50,000 to \$69,000	\$70,000 and over
Annual Expenditures									
Food	1,874	1,960	2,255	2,645	2,951	3,331	3,768	4,356	5,563
Apparel	653	524	536	742	1,209	1,418	1,654	1,639	3,720
Health insurance	229	593	825	694	553	538	623	562	784
Medical services	487	498	375	490	442	397	531	603	704
Prescription drugs	422	302	446	343	239	190	476	298	360
Medical supplies	27	56	94	72	86	49	106	125	99
Personal care products and services	449	494	246	260	264	379	337	413	449
Education	1,022	422	263	325	347	204	404	352	854
Life and other personal insurance	47	88	118	128	198	162	204	342	436

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

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Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	3,032	2,914	3,349	3,929	4,559	5,075	5,796	6,177	7,884
Apparel	881	719	891	1,248	1,280	1,476	1,667	1,919	3,564
Health insurance	610	823	1,052	1,366	1,463	1,347	1,225	1,202	1,258
Medical services	465	364	253	574	555	694	621	688	1,058
Prescription drugs	324	320	582	847	725	538	480	525	557
Medical supplies	93	44	120	139	154	137	162	178	174
Personal care products and services	331	316	363	438	559	540	638	683	908
Education	353	203	167	254	239	441	435	489	984
Life and other personal insurance	257	151	283	268	437	517	427	531	881

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	3,497	2,894	3,294	3,804	4,378	4,839	5,276	5,679	7,727
Apparel	1,457	702	824	1,024	1,280	1,590	1,754	1,837	3,055
Health insurance	579	819	1,063	1,420	1,453	1,379	1,113	1,090	1,211
Medical services	459	366	349	635	541	623	564	677	1,198
Prescription drugs	290	337	528	838	648	511	495	464	529
Medical supplies	84	60	111	188	132	150	181	150	172
Personal care products and services	544	284	266	293	432	450	533	498	766
Education	353	263	166	191	301	377	448	506	929
Life and other personal insurance	330	164	255	277	329	439	692	560	919

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	4,973	4,006	3,410	4,508	5,079	5,386	6,185	6,286	8,833
Apparel	2,249	1,166	1,038	1,350	1,753	2,127	1,695	2,392	3,527
Health insurance	829	427	606	630	935	975	1,057	1,119	1,200
Medical services	457	277	287	322	562	580	466	794	905
Prescription drugs	294	217	300	339	343	398	363	376	463
Medical supplies	78	37	41	44	67	81	90	147	164
Personal care products and services	467	391	344	419	528	569	732	729	1,018
Education	494	135	297	301	419	447	366	790	1,794
Life and other personal insurance	205	149	209	186	264	364	360	488	957

Debtor's Available Resources	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	4,496	3,764	3,280	4,537	4,880	5,268	6,151	6,422	8,841
Apparel	1,295	1,102	1,187	1,342	1,642	1,976	1,789	2,132	3,421
Health insurance	655	372	513	772	932	964	1,132	1,017	1,203
Medical services	584	272	289	388	450	490	492	811	923
Prescription drugs	245	238	268	346	330	382	335	330	426
Medical supplies	79	36	56	64	71	91	89	144	172
Personal care products and services	445	224	230	276	364	438	537	494	798
Education	469	266	166	545	427	402	352	802	1,672
Life and other personal insurance	495	160	157	203	267	342	368	445	953

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	4,702	4,628	4,857	5,106	5,748	7,893	7,565	9,424
Apparel	1,931	2,002	2,181	1,758	2,256	2,213	2,844	3,976
Health insurance	371	645	550	755	959	1,079	1,172	1,302
Medical services	170	365	235	531	512	621	673	981
Prescription drugs	164	187	232	261	295	410	332	387

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Medical supplies	27	160	35	60	56	115	127	188
Personal care products and services	535	447	405	483	538	717	771	1,031
Education	438	641	344	451	462	527	779	1,636
Life and other personal insurance	266	352	205	233	399	349	574	1,120

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures								
Food	4,276	4,193	4,540	4,833	6,075	6,861	8,030	9,464
Apparel	4,688	4,922	2,106	4,749	2,334	4,975	2,855	3,948
Health insurance	369	425	533	763	819	4,092	4,450	4,323
Medical services	204	244	304	574	473	735	826	948
Prescription drugs	227	495	497	238	234	414	343	326
Medical supplies	44	439	29	55	59	124	148	247
Personal care products and services	284	365	228	309	476	479	704	817
Education	228	408	207	364	649	505	686	4,749
Life and other personal insurance	169	188	477	253	384	368	574	4,444

10. If the debtor's household consists of five (5) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	6,349	5,046	5,671	6,800	7,472	7,887	8,576	10,815
Apparel	2,289	1,957	2,051	2,482	2,588	2,535	2,676	4,855
Health insurance	468	268	448	666	904	1,082	1,116	1,373
Medical services	340	85	154	407	416	491	728	1,168
Prescription drugs	181	291	265	270	351	353	478	443
Medical supplies	43	44	48	66	117	104	138	191
Personal care products and services	667	424	493	554	655	701	739	1,091
Education	213	185	180	294	400	655	865	2,091
Life and other personal insurance	235	171	207	229	261	372	629	931

Debtor's Available Resources	Less than \$10,000	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Food	6,046	4,769	5,436	5,754	7,488	7,236	8,536	10,948
Apparel	4,889	4,970	4,913	2,712	2,725	2,450	2,274	4,175
Health insurance	404	308	472	636	813	4,095	4,412	4,389
Medical services	209	445	243	337	484	494	762	4,404
Prescription drugs	168	445	243	337	484	494	362	432
Medical supplies	47	36	55	60	147	116	124	242
Personal care products and services	497	292	294	353	414	455	654	925
Education	458	498	245	308	404	599	957	4,746
Life and other personal insurance	265	446	447	250	253	363	633	978

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for

discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) In the case of an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or re-

fuses to sign a receipt.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures to be followed by the authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(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 by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

(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 to Section 4(6) of the administrative regulation will change the existing administrative regulation by adopting the latest available figures reflecting annual consumer expenditures published by the United States Department of Labor, Bureau of Labor Statistics, and adopting the latest available poverty guidelines published by the United States Department of Health and Human Services in order to determine the validity of a borrower's claim of extreme financial hardship.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to Section 4(6) of this administrative regulation conforms with the requirements of federal and state law that the authority promulgate regulations establishing the procedures for the conduct of hearings regarding administrative wage garnishment by the authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to Section 4(6) will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During FY 2000-2001 approximately 2,149 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 70 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 70 hearing requests, 45 hearings were requested on the grounds of extreme financial hardship.

(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: Upon notice of the authority's intent to issue an administrative wage garnishment, a student loan borrower contesting the garnishment and asserting a claim of extreme financial hardship will submit financial data to be evaluated in comparison to the data contained in the administrative regulation. Expenditures reported by the borrower which exceed the amounts specified in the administrative regulation will be presumed to be unnecessary. Thus, the most recent figures relating to consumer expenditures must be utilized in the administrative regulation.

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing extreme financial hardship are provided to the borrowers at no cost to the borrower. The authority bears any costs associated with the request for hearing.

(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 authority maintains a federally restricted trust fund pursuant to 20 USC Section 1072b for operation of the insured student loan program.

(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 is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower's assertion that administrative wage garnishment will create an extreme financial hardship.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain regulated entities. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR 682.410(b)(10), 20 USCS 1095a

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect

the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within 60 days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 USC 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the authority, as the designated state guarantee authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 USCS 1095a) and the applicable federal regulation (34 CFR 682.410(b)(10)). Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute: At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the authority may prescribe, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the authority may prescribe, may be rendered within 60 days, but shall not delay issuance of a withholding order. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 USC 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the authority, the hearing must be conducted and a decision rendered within 60 days after the receipt of the request for a hearing, and that the hearing officer's

decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe". The authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(Amendment)

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

RELATES TO: KRS 164.740 to 164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 264.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions, except a summer quarter at an educational institution that uses a quarter system.

(2) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) se-

mester hours, or thirty-six (36) quarter hours of instruction.

(3) "Authority" is defined by KRS 164.740(1).

(4) "Business school" is defined by KRS 164.740(3).

(5) "College Access Program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(6) "College" is defined by KRS 164.740(4).

(7) "Correspondence course" means a home study course that is:

(a) Provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and returns the examinations to the institution for grading;

2. Provides instruction in whole or in part through the use of video cassettes or video discs in an academic year, unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and

(c) Does not include courses from the Kentucky Commonwealth Virtual University (KCVU).

(8) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(9) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) As a condition of enrollment as a regular student, requires that the person:

1. Have a certificate of graduation from a school providing secondary education, or the equivalent of a certificate; or

2.a. Be beyond the age of compulsory attendance in Kentucky; and

b. Have the ability to benefit from the training offered by the institution; and

(c)1. For purposes of the College Access Program is, a business school, college, school of nursing or vocational school, and meets the requirements of 20 USC 1070 to 1070c-4 and 1088 to 1099; or

2. For purposes of the Kentucky Tuition Grant Program, is a private college whose institutional programs are not comprised solely of sectarian instruction.

(10) "Eligible noncitizen" means an individual who is:

(a) Either:

1. A U.S. national;

2. A U.S. permanent resident with an Alien Registration Receipt Card (I-151 or I-551); or

3. A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

a. "Refugee";

b. "Asylum granted";

c. "Indefinite parole" or "humanitarian parole"; or

d. "Cuban-Haitian entrant"; and

(b) Not in the United States on a:

1. F1 or F2 student visa;

2. J1 or J2 exchange visa; or

3. G series visa.

(11) "Eligible program of study" means an undergraduate program and, for purposes of CAP grants, a program of study designated as an equivalent undergraduate program of study by the Council on Postsecondary Education in an administrative regulation offered by an educational institution which:

(a) Is of at least two (2) academic years duration;

(b) For purposes of the Kentucky Tuition Grant Program, leads to a degree in a field other than theology, divinity or religious educa-

tion at the institution at which the student is enrolled; and

(c) For purposes of the CAP Grant Program, leads to a certificate, diploma, or degree in a field other than theology, divinity or religious education.

(12) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying the federal methodology established in 20 USC 1087kk through 1087vv to the information that the student and his family provided on the application.

(13) "Federal act" is defined by KRS 164.740(9) and means 20 USC 1001 through 1146a.

(14) "Full-time student" means an enrolled student who is carrying a full-time academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, except that correspondence courses shall not be counted in determining the student's full-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. Twelve (12) semester hours or twelve (12) quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

2. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one (1) academic year;

3. Twenty-four (24) clock hours per week for an educational program using clock hours;

4. In an educational program using both credit and clock hours, any combination of credit and clock hours if the sum of the following fractions is equal to or greater than one (1):

a. For a program using a semester, trimester, or quarter system, the number of credit hours per term divided by twelve (12) and the number of clock hours per week divided by twenty-four (24); or

b. For a program not using a semester, trimester, or quarter system, the number of semester or trimester hours per academic year divided by twenty-four (24) and the number of quarter hours per academic year divided by thirty-six (36) and the number of clock hours per week divided by twenty-four (24);

5. A series of courses or seminars that equals twelve (12) semester hours or twenty-four (24) quarter hours in a maximum of eighteen (18) weeks; or

6. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(15) "Grant" is defined by KRS 164.740(10).

(16) "Kentucky Tuition Grant" or "KTC" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(17) "KHEAA grant" means an award of a student financial assistance grant under the College Access Program or the Kentucky Tuition Grant Program or a combination of the two (2).

(18) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards to an individual which is:

(a) Measured in terms of the number of semesters during which a KHEAA grant is disbursed to a full-time student and not fully refunded; and

(b) Depleted by one (1) semester:

1. For a KHEAA grant disbursed to a full-time student in a semester; or

2. By a CAP grant recipient enrolled less than full time, who receives the cumulative equivalent amount of CAP grant that would have been received by a full-time CAP grant recipient using the then current maximum CAP grant.

(19) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the educational institution's on-campus

agent to certify all institutional transactions and activities with respect to the authority's grant programs.

(20) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:120 through 5:145.

(21) "Part-time student" means an enrolled student who is carrying an academic workload:

(a) That may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as at least a half-time student, except that correspondence courses shall not be counted in determining the student's part-time status; and

(b) As determined by the institution under a standard applicable to all students enrolled in a particular educational program, except that for an undergraduate student, an institution's minimum standard shall equal or exceed one (1) of the following minimum requirements:

1. At least six (6) semester hours per semester;

2. Six (6) quarter hours per quarter; or

3. Half of the academic workload of a full-time student as determined by the educational institution.

(22) "Pell Grant" means an award under the federal Pell Grant Program operated by the secretary under the provisions of 20 USC 1070a.

(23) "Resident of Kentucky" or "resident" means a person who is classified as an in-state student in accordance with the criteria established in 13 KAR 2:045.

(24) "Total cost of education" means an amount determined for an academic year for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program.

(b) The necessity of this administrative regulation: KRS 264.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program. The proposed amendment conforms the regulation to legislation recently passed in the 2002 Regular Session of the General Assembly, particularly the definition to HB 684 by broadening the definition of eligible program

of study.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation merely defines terms used in 11 KAR Chapter 5 pertaining to the Kentucky Tuition Grant Program and the College Access Program. The proposed amendment merely broadens the definition of eligible program of study pertinent to CAP grants to ensure that the College Access Program is awarded to qualified applicants.

(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 Kentucky Higher Education Assistance Authority intends to amend this administrative regulation governing the subject matter listed above, particularly, to amend the definition of "eligible program of study" to include students enrolled in an "equivalent undergraduate program of study" as designated by the Council on Postsecondary Education. This is to conform the definition to HB 684 passed in the 2002 Regular Session of the General Assembly.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the General Assembly, particularly, HB 684.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the General Assembly, particularly, HB 684.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment merely broadens the definition of eligible program of study pertinent to CAP grants to ensure that the College Access Program is awarded to qualified applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently only 2 educational entities provide programs of study which are designated as an equivalent undergraduate program of study by the Council on Postsecondary Education in an 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 proposed amendment merely broadens the definition of eligible program of study pertinent to CAP grants to ensure that the College Access Program is awarded to qualified applicants. This will allow students, enrolled in a graduate or professional program after only 2 or 3 years of undergraduate work, to receive consideration for a CAP grant for the maximum of 9 semesters. The proposed amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the General Assembly, particularly, HB 684.

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

(a) Initially: The proposed amendment merely broadens the definition of eligible program of study pertinent to CAP grants. Therefore, there is no direct or indirect cost or savings.

(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. Grants for students under the College Access Program and the Kentucky tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not

applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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
(Amendment)

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;

(2) Be enrolled at an educational institution as ~~for~~ at least a part-time student ~~[six (6) semester hours or half time]~~ as determined by the educational institution, ~~[whichever is greater]~~, in an eligible program of study and not have previously earned a first baccalaureate or professional degree;

(3) Demonstrate financial need in accordance with 11 KAR 5:120 through 11 KAR 5:145 for CAP grant assistance;

(4) Have remaining KHEAA grant limit.

~~(a) [For purposes of a CAP grant]~~ A student enrolled as a full-time student in each academic term of a two (2) year eligible program of study shall be limited to five (5) semesters of CAP grant program eligibility.

~~(b)~~ A student enrolled as a full-time student in each academic term of a four (4) year eligible program of study shall be limited to nine (9) semesters of CAP grant program eligibility (including any KHEAA grant limit used in a two (2) year eligible program of study);

(5) Not receive financial assistance in excess of need to meet educational expenses;

(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;

(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 and to any educational institution, 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;

(8) Be a citizen of the United States or an eligible noncitizen;

(9) Be receiving full-time credit at an educational institution in an eligible program of study and paying full-time tuition and fees to that institution, if the student is studying abroad or off-campus; and

~~(10)(a) Be enrolled as a full-time student in at least one (1) quarter or as at least a part-time student in two (2) quarters of the fall academic term to receive a disbursement in the fall; and~~

~~(b) Be enrolled as a full-time student in at least one (1) quarter or as at least a part-time student in two (2) quarters of the spring academic term to receive a disbursement in the spring].~~

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the College Access Program. The amendment merely deletes a requirement that a student enrolled as a part-time student at an educational institution using a quarter-hour system must be enrolled part-time in 2 quarters to be the equivalent of a student enrolled part-time in a single semester at an educational institution using a semester system.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes student eligibility requirements for the College Access Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive CAP grant funds, including being at least a part-time student and ensuring that students enrolled at an educational institution using quarter hours as a part-time or full-time student receive the maximum CAP grant allowed for any academic period.

(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 Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above, particularly to modify student enrollment requirements for CAP grant eligibility by deleting a requirement that a student enrolled as a part-time student at an educational institution using a quarter-hour system be enrolled part-time in two quarters to be the equivalent of a student enrolled part-time in a single semester at an educational institution using a semester system.

(b) The necessity of the amendment to this administrative regulation: The amendment eliminates a disparity in the treatment of students enrolled part-time at institutions using a semester system and institutions using a quarter system.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes student eligibility requirements for the College Access Program by deleting a requirement that a student enrolled as a part-time student at an educational institution using a quarter-hour system be enrolled part-time in 2 quarters to be the equivalent of a student enrolled part-time in a single semester at an educational institution using a semester system and, therefore, treats the students consistently regardless of

whether they attend an institution using semesters or quarters.

(d) How the amendment will assist in the effective administration of the statutes: The amendment merely deletes a requirement that a student enrolled as a part-time student at an educational institution using a quarter-hour system must be enrolled part-time in two quarters to be the equivalent of a student enrolled part-time in a single semester at an educational institution using a semester system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 72 Kentucky postsecondary institutions are eligible for attendance by recipients of KHEAA grants. In the academic year ending June 30, 2001, there were 123,000 applicants and 38,900 students received KHEAA grants. In addition, there are thirteen (13) quarter-hour postsecondary schools that will be treated more consistently in regard to CAP grant eligibility.

(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 merely deletes a requirement that a student enrolled as a part-time student at an educational institution using a quarter-hour system must be enrolled part-time in two quarters to be the equivalent of a student enrolled part-time in a single semester at an educational institution using a semester system.

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

(a) Initially: The amendment merely deletes a requirement relative to student enrollment requirements for CAP grant eligibility. There is an undetermined cost involved in reprogramming of the authority's grant system; but the amount of the grant, the funds available for grants, and in general the overall cost of administering the program will not increase or decrease.

(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. Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs, and administrative costs are borne by the authority through receipts of the authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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
(Amendment)**

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 164.7535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs.

Section 1. (1) In order to receive a KHEAA grant, the 2002-2003 Free Application for Federal Student Aid (FAFSA) shall be completed and submitted in accordance with the instructions provided on the FAFSA.

(2) An applicant shall indicate the choices [choice] of [an] educational institutions [institution] on the application to be considered for the KHEAA grant. All [The] educational institutions listed on the FAFSA [institution listed first] shall be used in the determination of eligibility for a KHEAA grant program award.

(3) A person who submits a completed FAFSA shall not be eligible for a KHEAA grant for an academic year in which the person:

- (a) Did not select on the application an educational institution that participates in a KHEAA grant program;
- (b) Is not:
 - 1. A United States citizen or eligible noncitizen; and
 - 2. A resident of Kentucky;
- (c) Is a graduate student; or
- (d) Will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking financial assistance.

Section 2. Change of Application Data. The applicant shall change or correct FAFSA data using the Student Aid Report (SAR), which is provided to the applicant by the United States Department of Education, and submit the change or correction according to instructions on the SAR. ~~Educational Institution Choice. (1) KHEAA grant eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution, if the student provides written notification of a change of the first choice educational institution, on or before:~~

~~(a) The latter of August 1 or ten (10) workdays following the date on which the authority notifies the student of the award for the fall academic term for which a KHEAA grant is sought; or~~

~~(b) The latter of December 1 or ten (10) workdays following the date on which the authority notifies the student of the award for the spring academic term for which a KHEAA grant is sought.~~

~~(2) If the student changes his choice of educational institution after August 1 and more than ten (10) workdays following the date the authority notifies the student of the award:~~

~~(a) A KHEAA grant awarded for the fall academic term shall be revoked; and~~

~~(b) Except as provided in subsection (3) of this section, the KHEAA grant amount awarded for the spring academic term shall be recomputed, based upon the new choice of educational institution.~~

~~(3) If the student changes his choice of educational institution after December 1 and more than ten (10) workdays following the date the authority notifies the student of the award, the KHEAA grant awarded for the spring academic term shall be revoked.]~~

Section 3. Incorporation by Reference. (1) The 2002-2003 Free Application for Federal Student Aid (FAFSA) and its instructions are incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road [4050 U.S. 127 South], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on

the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs. The amendment conforms to the content of the authorizing statutes by prescribing a method of awarding grants which allows more flexibility to the students and educational institutions, thereby leading to a more efficient allocation of grant funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs.

(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 merely adds that an applicant shall indicate the educational institutions on the application and that applicants should submit corrected information using the Student Aid Report (SAR).

(b) The necessity of the amendment to this administrative regulation: The amendment provides that all educational institutions listed on the application by the student will be considered in the eligibility determination. The amendment further provides that the student shall submit changed information through the federal application process rather than directly to KHEAA. Finally, the amendment eliminates deadlines by which the student had to notify KHEAA of a change in the top choice of which institution he plans to attend. This latter requirement limited students and caused some students to lose eligibility. The change promotes and facilitates portability of the grants.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by prescribing a method of awarding grants which allows more flexibility to the students and educational institutions, thereby leading to a more efficient allocation of grant funds.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment eliminates deadlines by which the student had to notify KHEAA of a change in the top choice of which institution he plans to attend. This latter requirement limited students and caused some students to lose eligibility. The change promotes and facilitates portability of the grants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of 72 Kentucky postsecondary institutions are eligible for attendance by recipients of KHEAA grants. In the academic year ending June 30, 2001, there were 123,000 applicants and 38,900 students received KHEAA grants.

(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 merely adds that an applicant shall indicate the educational institutions on the application and that applicants should submit corrected information using the Student Aid Report (SAR). The

amendment conforms to the content of the authorizing statutes by prescribing a method of awarding grants which allows more flexibility to the students and educational institutions, thereby leading to a more efficient allocation of grant funds.

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

(a) Initially: There is an undetermined cost involved in reprogramming of the authority's grant system; but the amount of the grant, the funds available for grants, and in general the overall cost of administering the program will not increase or decrease.

(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. Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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
(Amendment)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be \$3,800 ~~[3,550]~~ or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection ~~(2)~~ ~~[(6)]~~ of this section, the maximum CAP grant in any semester

for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program at a college, business school, school of nursing, or vocational school ~~[on a full-time basis as determined by the educational institution]~~ shall be the lesser of:

(a) \$630 ~~[The prevailing full-time student tuition charge at publicly supported community colleges in Kentucky at that time;~~

~~(b) \$605; or~~

~~(b) [(c)]~~ The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

~~(2) [Except as provided in subsection (5) of this section,] The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program at a college, business school, school of nursing, or vocational school [on less than a full-time basis as determined by the educational institution] shall be:~~

~~(a) The [lesser of the] amount specified in subsection (1)(a) of this section:~~

~~1. Divided by twelve (12); and~~

~~2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and~~

~~(b) [Subsection (1)(a) of this section; or~~

~~2. Subsection (1)(b) of this section;~~

~~(b) Divided by twelve (12);~~

~~(c) Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and~~

~~(d) Not in excess of the maximum specified in subsection (1)(b) [(c)] of this section.~~

~~(3) For any academic year, a student shall not receive more than \$1,260 for an aggregate CAP grant award. [Except as provided in subsection (5) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment in an eligible program at a business school, school of nursing, or vocational school on a full-time basis as determined by the educational institution shall be the lesser of:~~

~~(a) The prevailing full-time student tuition charge at publicly operated vocational technical institutions in Kentucky at that time;~~

~~(b) \$605; or~~

~~(c) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.~~

~~(4) Except as provided in subsection (5) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment in an eligible program at a business school, school of nursing, or vocational school on less than a full-time basis, as determined by the educational institution, shall be:~~

~~(a) The lesser of the amount specified in:~~

~~1. Subsection (3)(a) of this section; or~~

~~2. Subsection (3)(b) of this section;~~

~~(b) Divided by twelve (12);~~

~~(c) Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and~~

~~(d) Not in excess of the maximum specified in subsection (3) of this section.~~

~~(5)(a) Twenty-five (25) dollars per semester shall be added to the maximum CAP grant specified in subsections (1) and (3) of this section.~~

~~(b) Twenty-five (25) dollars, prorated by the ratio that the recipient's enrollment status bears to full-time enrollment, shall be added per semester to the maximum CAP Grant specified in subsections (2) and (4) of this section.]~~

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other

sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed; the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative

regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program. The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution and by setting the maximum amount that a student may receive in CAP grant funds for a given academic year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students applying for a CAP grant meet the required financial need criteria and those students receive the maximum CAP grant allowed for any academic period. The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students and establishes the aggregate CAP grant award amount in any given academic 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: The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need and establishes the aggregate CAP grant award amount in any given academic year. The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation governing the subject matter listed above, particularly increasing the estimated family contribution that is used to demonstrate financial need and establishing a maximum disbursement for any given academic year.

(b) The necessity of the amendment to this administrative regulation: The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution and by setting the maximum amount that a student may receive in CAP grant funds for a given academic year.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution and by setting the maximum amount that a student may receive in CAP grant funds for a given academic year.

(d) How the amendment will assist in the effective administration of the statutes: This amendment merely increases the maximum expected family contribution level and establishes the aggregate CAP grant award pertinent to the awarding of grants, scholarships, and honorary scholarships.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of 72 Kentucky postsecondary institutions are eligible for attendance by recipients of KHEAA grants including 13 quarter hour postsecondary schools. In the academic year ending June 30, 2001, there were 123,000 applicants and 38,900 students received KHEAA grants.

(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 to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students and establishes the aggregate CAP grant award amount in any given academic year.

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

(a) Initially: The administrative regulation increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students. However, the amount of the grant, the funds available for grants, and in general the overall cost of administering the program will not increase or decrease.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation. Grants for students under the College Access Program and the Kentucky tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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
(Amendment)**

11 KAR 5:150. Notification of award.

RELATES TO: KRS 164.740 to 164.764, 164.780, 164.785, 1994 Ky. Acts ch. 36

STATUTORY AUTHORITY: KRS ~~[13A.100]~~ 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. ~~[The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions.]~~ This administrative regulation sets forth the procedures for notification to applicants and to educational institutions. ~~[This amendment reflects the codification of the CAP grant program by enactment of 1994 Ky. Acts ch. 36.]~~

Section 1. The authority shall notify each KHEAA grant recipient of the authority's determination of eligibility for a KHEAA grant. ~~[amount of award together with disbursement information. The recipient shall notify the authority of any incorrect information appearing on the notice, including name, address, Social Security number or institutional choice errors or changes.]~~

Section 2. ~~[So long as funds are available]~~ The authority shall direct applicants to the KHEAA web site to inform them of the amount of award or the ~~[individually notify applicants of the]~~ reason for their denial. ~~[When funds are no longer available, public, rather than individual, notification shall be given.]~~

Section 3. The KGPO may access on the KHEAA web site the educational institution's College Summary File ~~[Periodically the authority shall forward to the KGPO at each educational institution a report]~~ listing ~~[student]~~ applicants who have indicated that they may enroll at the ~~[indicating that]~~ institution ~~[as the one in which they plan to enroll].~~

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for notification to applicants and to educational institutions.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by prescribing a method of notification of potential grant recipients which allows more flexibility to the recipients and educational institutions, thereby more efficiently allocating grant funds.

(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 notification to applicants and to educational institutions. The amendment to this administrative regulation merely changes the manner in which award information is provided to applicants and how educational institutions access college summary files relative to the awarding of grants to students that plan to attend that 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 Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above, particularly, the manner in which students are notified of grant eligibility or grant denial, the amount of the grant, and access by educational institutions to their college summary files by making that information available on KHEAA's website respectively to the students and the institutions.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation ensure institutions and students be efficiently notified in regard to eligibility and award amounts as well as facilitate providing information to educational institutions by making it available on the KHEAA website.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by prescribing a method of notification of potential grant recipients which allows more flexibility to the recipients and educational institutions, thereby more efficiently allocating grant funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation allows more flexibility to the recipients and educational institutions in accessing accurate, up-to-date information through the KHEAA Web site rather than through paper correspondence.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A total of 72 Kentucky postsecondary institutions are eligible for attendance by recipients of KHEAA grants. In the academic year ending June 30, 2001, there were 123,000 applicants and 38,900 students received KHEAA grants.

(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 to this administrative regulation merely changes the manner in which award information is provided to applicants and how educational institutions access college summary files relative to the awarding of grants. When the authority notifies a student of their eligibility status, the student will be directed to the KHEAA Web site. The authority will provide the College Summary File for educational institutions to access on the Web site, which allows more flexibility to the recipients and educational institutions, thereby more efficiently allocating grant funds.

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

(a) Initially: There is an undetermined cost involved in reprogramming of the authority's grant system, but the amount of the grant, the funds available for grants, and in general the overall cost of administering the program will not increase or decrease. Therefore it has no substantial direct or indirect cost or savings.

(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. Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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
 (Amendment)

11 KAR 5:160. Disbursement procedures.

RELATES TO: KRS 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the disbursement procedures for KHEAA grant programs.

Section 1. Eligibility Verification. (1) ~~The KHEAA grant program eligibility verification roster shall be forwarded to the KGPO at each educational institution prior to the beginning of each semester.~~ (2) The KGPO shall certify the eligibility of students and submit to the authority a complete and accurate eligibility verification file (EVF), ~~[KHEAA grant recipients and return the roster to the authority]~~ according to instructions accompanying ~~[attached to]~~ the eligibility verification file layout provided by the authority, to indicate which KHEAA grant recipients are actually enrolled at the institution.

(2) The educational institution shall submit to the authority a properly certified eligibility verification file (EVF):

(a) For the fall academic term, beginning not earlier than June 1 and not later than December 31, by:

1. October 1 for educational institutions using nonquarter hour academic terms; and

2. October 15 for educational institutions using quarter hour academic terms; and

(b) For the spring academic term, beginning not earlier than January 1 and not later than June 30, by:

1. February 15 for educational institutions using nonquarter hour academic terms; and

2. April 15 for educational institutions using quarter hour academic terms.

(3) The instructions accompanying the eligibility verification file layout shall specify:

(a) Conditions under which a KHEAA grant shall be disbursed to the benefit of the KHEAA grant recipient; and

(b) Conditions under which KHEAA grant funds shall be returned to the authority.

(4) If the KGPO fails to provide complete and accurate information in the proper format in the eligibility verification file according to the instructions or fails to submit the file to the authority by the deadline established in subsection (2) of this section, the authority shall not advance KHEAA grant funds in the next academic term until the file for the next academic term is properly certified and submitted. ~~[roster. If the KGPO fails to properly certify the roster or fails to return the roster to the authority by the deadline established in the instructions, the authority shall not disburse KHEAA grant funds in the next academic term until the roster for that academic term is properly certified and returned.]~~

Section 2. Disbursement and Delivery of Funds. ~~[(4)]~~ KHEAA grant funds shall be disbursed by the authority twice during an academic year to educational institutions for subsequent delivery to eligible students or application of the funds to the accounts of eligible students during the academic term for ~~[in]~~ which the funds are received by the educational institution.

(1)(a) Except as provided in Section 1(3) ~~[(2)]~~ of this administrative regulation and subject to the availability of funds, ~~[a disbursement by]~~ the authority shall disburse in August to educational institutions, for subsequent delivery to eligible students or application of the funds to the accounts of eligible students enrolled at the institution during the fall academic term beginning not earlier than June 1 and not later than December 31, the amount of KHEAA grant funds equal to the total amount of KHEAA grant funds that the institution properly paid to students for the fall academic term of the preceding academic year. ~~[to educational institutions of one-half (1/2) of the KHEAA grant funds indicated on the eligibility verification roster shall be made in August for subsequent delivery by the institution to eligible students or application of the funds to the accounts of eligible students enrolled for a semester or quarters beginning not earlier than June 1 and not later than December 31.]~~

(b) Except as provided in Section 1(3) of this administrative regulation and subject to the availability of funds, the authority shall disburse in January to educational institutions, for subsequent delivery to eligible students or application of the funds to the accounts of eligible students enrolled at the institution during the spring academic term, beginning not earlier than January 1 and not later than June 30, the amount of KHEAA grant funds equal to the total amount of KHEAA grant funds that the institution properly paid to students for the spring academic term of the preceding academic year.

(2) The educational institution shall deliver KHEAA grant funds to eligible students or apply KHEAA grant funds to the accounts of

eligible students enrolled for the academic term beginning not earlier than ten (10) days before the first day of classes of each semester, trimester or quarter of the academic term.

(3) Upon receipt of the properly certified eligibility verification file for that academic term, the authority shall process the EVF data and update the grant database with award information. Based on the newly-revised database, the authority shall generate a semester College Disbursement Report/File for each institution. Based on this update, the authority shall determine through a reconciliation process whether any additional funds are owed to or refunds are due from the institution. If additional funds are owed to the institution, the authority shall forward those funds to the institution and if refunds are due from the institution, the authority shall bill the institution.

(4) Not later than thirty (30) days after the end of the academic term, the KGPO shall return to the authority, according to instructions attached to the eligibility verification file layout [roster], all funds advanced for that academic term that remain undisbursed to eligible students. The authority may withhold any services and funds from the educational institution from the due date until the eligibility verification file and all funds advanced, that remain undisbursed to eligible students, are received by the authority [Upon receipt of the properly certified eligibility verification roster for that academic term, the authority shall transfer additional funds, if necessary, to the KGPO.

(b) Except as provided in Section 1(2) of this administrative regulation, a disbursement by the authority to educational institutions of one-half (1/2) of the KHEAA grant funds indicated on the eligibility verification roster shall be made in January for subsequent delivery by the institution to eligible students or application of the funds to the accounts of eligible students enrolled for a semester or quarters beginning not earlier than January 1 and not later than June 30. Not later than thirty (30) days after the end of the academic term, the KGPO shall return to the authority, according to instructions attached to the roster, all funds advanced for that term that remain undisbursed to eligible students. Upon receipt of the properly certified eligibility verification roster, the authority shall transfer additional funds, if necessary, to the KGPO.

(2) The instructions accompanying the eligibility verification roster shall specify:

(a) Conditions under which a KHEAA grant shall be disbursed to the benefit of the KHEAA grant recipient;

(b) Conditions under which KHEAA grant 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.

(3) An institution which has not returned an eligibility verification roster or completed it according to the instructions shall not receive additional KHEAA grant funds until it has complied with the instructions identified in subsection (2) 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. (1) If the student is going to graduate at the end of the fall academic term and has been awarded the KTG for the entire academic year, then the KGPO may request that the authority disburse the student's full KTG award amount during the fall. That request by the KGPO must be indicated on the fall EVF, in which case, [Alternative Disbursement. In lieu of the processes respecting the disbursement of KHEAA grant funds pursuant to Section 2 of this administrative regulation, the authority may enter agreements with the educational institution on terms as the authority deems appropriate to provide alternative methods for economical and efficient disbursement of KHEAA grants.

Section 4. (1) If the student submits to the authority a written request to receive the maximum KTG for which he is eligible during the fall semester and that request is received by the authority not later than the latter of August 1 or ten (10) work days following the date on which the authority notifies the student of the award for the fall academic term for which a KTG is awarded,] the entire amount of the KTG, up to the amount of tuition and fees charged for the fall academic term, may be disbursed for that academic term. Otherwise, a KTG awarded for the academic year shall be disbursed in

the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term.

(2) An educational institution that uses an academic quarter system shall apply to the student's account or deliver to the student a KTG for an academic term so that the first disbursement occurs in the second quarter of enrollment as a full-time student and the second disbursement occurs in the third quarter of enrollment as a full-time student.

Section 4. [5.] (1) A CAP grant awarded for the academic year shall be disbursed by the authority in the amount of one-half (1/2) for the fall academic term and one-half (1/2) for the spring academic term for enrollment in each academic term as a full-time student.

(2) The educational institution shall adjust the amount of CAP grant delivered to an eligible student or applied to the account of the eligible student enrolled at the institution during the academic term [A CAP grant for an academic year shall be divided by the number of semesters, trimesters or quarters in the academic year. The amount of CAP grant disbursed in an academic term shall be adjusted] for enrollment as a part-time student during the [aa] academic term.

(3) An educational institution that uses an academic quarter system shall apply to the student's account or deliver to the student a CAP grant for an academic term so that the first disbursement occurs in the first [second] quarter of enrollment as at least a part-time student and the second disbursement occurs in the third quarter of enrollment as at least a part-time student in the fall and spring academic terms. [The maximum CAP grant amount that may be applied by the educational institution to a student's account or delivered to a student attending a business school, school of nursing, or vocational school in one (1) quarter shall not exceed one-half (1/2) of the tuition charges for one (1) academic term at publicly operated vocational technical schools in the Commonwealth.]

Section 5. [6.] (1) KHEAA grants disbursed by the authority to eligible students enrolled at an educational institution that uses a short winter term in combination with longer fall and spring terms shall be applied by the institution to the student's account or delivered to the student so that the first disbursement shall be in the fall academic term and the second disbursement shall be in the spring academic term.

(2) Enrollment during the shorter winter academic term shall not qualify a student for KHEAA grant assistance for that academic term. Credit hours for which the student is enrolled during the short winter academic term may be added to credit hours for which the student enrolls in the fall and spring academic terms to establish enrollment as a full-time student during those academic terms.

Section 6. [7.] (1) The educational institution shall:

(a) Be responsible for proper disbursement of KHEAA grants to the eligible student during the academic term [period] for which the grants are intended;

(b) Not make KHEAA grant funds available to the grant recipient nor apply those funds to the recipient's account:

1. Prior to the date that the recipient has completed the registration requirements (except for the payment of tuition and fees) at the institution for each academic semester or quarter for which the KHEAA grant is awarded; or

2. After the end of the academic term for which the funds are received by the institution;

(c) Be liable for disbursement to the wrong individual or to an ineligible student or for untimely disbursement pursuant to this section; and

(d) Make restitution to the authority of any amount improperly disbursed.

(2) Failure of the institution to make restitution when 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.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the disbursement procedures for KHEAA grant programs.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the disbursement procedures for KHEAA grant programs. This administrative regulation conforms to the content of the authorizing statutes by prescribing a method of disbursing grant funds that places more funds initially in the hands of the educational institutions, subject to reconciliation, thereby more efficiently allocating grant funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment establishes the disbursement procedures for KHEAA grant programs to ensure better portability of state grant funds among Kentucky schools for Kentucky students.

(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 Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above. In particular, the word "roster" shall be replaced with the word "file" throughout the above-cited administrative regulation. The Kentucky Higher Education Assistance Authority proposes to amend Section 1 to provide that the eligibility verification file (EVF) is forwarded to the authority from the KGPO at each institution. Section 1(2)(a) has been added to provide that, for the fall award period, the institution submit the EVF to the authority no later than October 1 for nonquarter hour schools and by October 15 for quarter-hour schools. Section 1(2)(b) has been added to provide that, for the spring award period, the institution shall submit the EVF to the authority by no later than February 15 for nonquarter hour schools and by April 15 for quarter hour schools. Section 2(1)(a)1 will be amended to provide that the authority shall disburse in August a pool of funds equal to the total amount of properly-paid grant funds by the school to students for the fall award period of the prior year. Section 2(1)(a)2 has been added to provide that the authority shall disburse in January a pool of funds equal to the total amount of properly-paid grant funds by the school to students for the spring award period of the prior year. Section 2(1)(c) has been added to provide that EVF data be processed and the grant database be updated by the authority after each award period which will allow the authority to generate disbursement reports and determine funds owed or refunds due.

(b) The necessity of the amendment to this administrative regulation: This amendment conforms to the content of the authorizing statutes by prescribing a method of disbursing grant funds which

allows more flexibility to the recipients and educational institutions, thereby more efficiently allocating grant funds. The process by which the authority disburses funds to the institutions is changing in order to accommodate the wishes of both the schools and the students. These changes will serve to allow better portability of state grant funds among Kentucky schools by Kentucky students.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by prescribing a method of disbursing grant funds which allows more flexibility to the recipients and educational institutions, thereby more efficiently allocating grant funds.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the disbursement procedures for KHEAA grant programs to ensure the efficiency of allocating grant funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 72 postsecondary educational institutions and an estimated 21,150 CAP grant recipients and 8,200 KTG recipients will receive Kentucky Higher Education Assistance Authority grant funds.

(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 the disbursement procedures for KHEAA grant programs. This administrative regulation conforms to the content of the authorizing statutes by prescribing a method of disbursing grant funds that allows more flexibility to the recipients and educational institutions, thereby more efficiently allocating grant funds.

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

(a) Initially: There is an undetermined cost involved in reprogramming of the authority's grant system, but the amount of the grant, the funds available for grants, and in general the overall cost of administering the program will not increase or decrease. Therefore it has no substantial direct or indirect cost or savings.

(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. Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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
 (Amendment)

11 KAR 15:010. Definitions for 11 KAR Chapter 15.

RELATES TO: KRS 164.7871 through 164.7885, 20 USC sec. 1087II

STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the definitions for 11 KAR Chapter 15.

Section 1. Definitions. (1) "Academic term" is defined in KRS 164.7874(1) and 13 KAR 2:090, Section 1(1).

(2) "ACT score" is defined in KRS 164.7874(3).

(3) "Authority" is defined in KRS 164.7874(4).

(4) [(3)] "Award period" is defined in KRS 164.7874(5).

(5) [(4)] "Correspondence course" means a home study course that is:

(a) Provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;

(b) Meets the following requirements:

1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and return the examinations to the institution for grading;

2. Provides instruction in whole or in part through the use of video cassettes or video discs in an academic year unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and

3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and

(c) Does not include courses from the Kentucky Commonwealth Virtual University (KCVU).

(6) [(5)] "Council" is defined in KRS 164.7874(6).

(7) "Eligible high school student" is defined in KRS 164.7874(8).

(8) [(6)] "Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary, undergraduate program that:

(a)1. Leads to a certificate, diploma, or associate or baccalaureate degree;

2. Is designated as an equivalent undergraduate program of study by the council in an administrative regulation; or

3. Is a degree program in a field of study that is not available at any participating institution in the Commonwealth but is offered at an out-of-state institution designated by the council as an approved participating institution;

(b) May include study abroad or away from the main campus if the student pays tuition to, and is given academic credit by, the participating institution for the study, except that a correspondence course shall not be included; and

(c) Does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.

(9) [(7)] "Eligible high school student" is defined in KRS 164.7874(8) [(7)].

(10) [(8)] "Eligible postsecondary student" is defined in KRS 164.7874(9) [(8)].

(11) [(9)] "Full-time student" is defined in KRS 164.7874(10) [(9)].

(12) [(10)] "Grade point average" is defined in KRS 164.7874(11) [(10)].

(13) "High school" is defined in KRS 164.7874(12).

(14) [(11)] "KEES" is defined in KRS 164.7874(13) [(12)].

(15) [(12)] "KEES Program officer" means the official designated

on the administrative agreement, pursuant to KRS 164.748(6) and 164.7874(17), to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Kentucky Educational Excellence Scholarship Program.

(16) [(13)] "Kentucky Educational Excellence Scholarship" is defined in KRS 164.7874(15) [(14)].

(17) [(14)] "Maximum award amount" is defined in KRS 164.7874(17) [(16)].

(18) [(15)] "Participating institution" is defined in KRS 164.7874(18) [(17)].

(19) [(16)] "Part-time student" is defined in KRS 164.7874(19) [(18)].

(20) [(17)] "Supplemental award" is defined in KRS 164.7874(20) [(19)].

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation itself merely defines terms commonly used in administration of the Kentucky Educational Excellence Scholarship Program (KEES) under 11 KAR Chapter 15 pertinent to the KEES Program.

(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the KEES Program. This administrative regulation establishes the definitions for 11 KAR Chapter 15. The amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the Kentucky General Assembly, particularly HB 330 and 684.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the Kentucky General Assembly, particularly HB 330 and 684, by adding definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation merely defines terms used in 11 KAR Chapter 15 pertinent to the KEES Program to ensure that the scholarship is awarded to qualified students.

(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 Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above, particularly to include the definition for "ACT score" and "eligible high school student" and to broaden the definition of "eligible program of study" as it relates to the administration of the KEES Program.

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

**COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)**

lation: The amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the Kentucky General Assembly, particularly HB 330 and 684.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the Kentucky General Assembly, particularly HB 330 and 684, by adding definitions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment merely adds definitions pertinent to the KEES Program such as "ACT score," "eligible high school student," and broadens the definition of "eligible program of study" to ensure that the scholarship is awarded to qualified students.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 90 postsecondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. More than 380 public and private Kentucky high schools are likewise eligible to participate and approximately 191,000 high school students are potentially eligible for scholarships.

(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 regulation merely defines terms used in 11 KAR Chapter 15 pertinent to the KEES Program to ensure that the scholarship is awarded to qualified students. The amendment conforms the regulation to legislation recently passed by the 2002 Regular Session of the Kentucky General Assembly, particularly HB 330 and 684, by adding definitions.

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

(a) Initially: The administrative regulation itself merely defines terms commonly used in administration of the KEES Program. Therefore it has no direct or indirect cost or savings.

(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 funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private, credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Kentucky educational excellence scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Kentucky educational excellence scholarship trust 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: This administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(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? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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.

13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program.

RELATES TO: KRS 154A.130(4), 156.070, 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.020(28), 164.7874, 164.7877(3), 164.7879(1), (3), 164.7881(4)(a), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the council to administer the Kentucky Educational Excellence Scholarship (KEES) Program. KRS 164.7877(3) requires the council to administer the funds appropriated to the trust fund for the program. KRS 164.7874(13) requires the council to develop and implement standards for high school curriculum as they relate to eligibility for participation in the program. KRS 164.7879(3)(c) requires the council to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires the council to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires the council to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the council to establish overall award levels for the program. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Academic year" is defined in KRS 164.7874(2).

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" means a cooperative educational endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KDE.

(5) "Authority" or "KHEAA" is defined in KRS 164.7874(4).

(6) "Council" or "CPE" is defined in KRS 164.7874(6).

(7) "Eligible high school student" is defined in KRS 164.7874(7) and 164.7879(2)(c).

(8) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that a student is attending.

(9) "GED" means a general educational development diploma awarded to a student.

(10) "High school" is defined in KRS 164.7874(11).

(11) "International baccalaureate course" means a course in a secondary education program sponsored by the International Baccalaureate Organization and recognized by the KDE in 704 KAR 3:340, Section 2(3)(b).

(12) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(13) "KEES curriculum" is defined in KRS 164.7874(13).

(14) "Participating institution" is defined in KRS 164.7874(17).

(15) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the college board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average, as defined in KRS 164.7874(10), for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the

course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F;"

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) Notwithstanding the provisions of paragraph (a)1 of this subsection, for an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F."

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and in the manner as the KDE or the KHEAA shall require.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

(5)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student must establish Kentucky residency and domicile with the council in accordance with 13 KAR 2:045 and KRS 164.7879(2)(c)1 and 2.

(b) The council annually shall certify to the Kentucky Department of Education the names of students who are eligible under the provisions of KRS 164.7879(2)(c).

(c) The council annually shall notify the eligible high school student of the results of a residency determination.

(6)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (5)(a) of this section, shall be responsible for:

1. Requesting grade information from the local school; and

2. Submitting the information to the Kentucky Department of Education.

(b) The Kentucky Department of Education, upon receipt of grade information on a student determined to be eligible for the KEES program under this section, shall determine eligibility for a KEES scholarship base award.

(7) The provisions of this subsection shall be effective with the 2001-02 academic year.

Section 3. KEES. (1) A Kentucky postsecondary education student shall be eligible to receive a base scholarship award when the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school except as provided in:

1. Section 2(4) of this administrative regulation; or

2. Section 2(5) of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

(2) A student shall complete the KEES curriculum established in this section to qualify for the base scholarship award.

(a) ~~Except as provided in subsection (3) of this section [paragraph (b) of this subsection], the KEES curriculum shall consist of the courses and electives required by this subsection [paragraph].~~

(a) [4.] For a student enrolled in high school during the 1998-1999 academic year, the curriculum required in 704 KAR 3:305, Section 1 or 2, as appropriate without restriction on the type of electives taken.

(b) [2.] For a student enrolled in high school during the 1999-2000 and 2000-01 academic years and who is required to meet the curriculum standards in 704 KAR 3:305, Section 1, the eight (8) electives required by 704 KAR 3:305, Section 1, shall be taken in the areas and according to the standards established in paragraph (d) of this subsection ~~[subparagraph 4 of this paragraph].~~

(c) [3.] For a student enrolled in high school during 1999-2000 and for each year thereafter who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the areas and according to the standards established in paragraph (d) of

~~this subsection [subparagraph 4 of this paragraph].~~

(d) [4.] The following subject areas and standards shall be applicable for electives. An elective in:

1. [a.] Social studies, science, mathematics, English/language arts, or arts and humanities shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.

2. [b.] Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.

3. [c.] Foreign languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.

4. [d.] Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.

(3) [(b)] A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

(a) [4.] The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document "Academic Expectations"; or

(b) [2.] The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.

(4) [(2)] A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 4. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the council.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board.

(3)(a) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

1. [a.] Architecture (04.0201);

2. [(b)] Landscape architecture (04.0601); and

3. [(c)] Engineering (14.0101, 14.0301, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1701, 14.1801, 14.1901, 14.2101, 14.9999.01).

(b) Pursuant to KRS 164.7535 and 164.7881(4)(c)1, the following academic programs are designated as equivalent undergraduate programs of study:

1. Semesters of study completed by an eligible postsecondary education student when a student:

a. Has not received eight (8) semesters of a KEES award; and

b. Is enrolled as a graduate student in an academic program determined by the council to be an equivalent undergraduate program; or

c. Is enrolled in either the:

(i) Pharm. D; or

(ii) The Kentucky Contract Spaces in:

i. Optometry; or

ii. Veterinary medicine.

2. The council annually shall publish a list of equivalent undergraduate programs of study and shall distribute that list to participating institutions and the KHEAA.

3. This paragraph shall be subject to the provisions of KRS 164.7881(3).

4. The provisions of this paragraph shall be effective with the 2001-02 academic year.

Section 5. Base Scholarship Award. A Kentucky resident enrolled in a Kentucky high school who is eligible for a base scholar-

ship award shall be limited to a maximum of four (4) base scholarship awards.

164.7874(3), the following SAT to ACT Conversion Table shall be used:

Section 6. SAT Conversion Table. Pursuant to KRS

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's eighteenth (18) birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school qualifies for a supplemental award when:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1 and 2;
- (b) An eligible student takes and receives a GED diploma within

five (5) years of attaining eighteen (18) years of age;

- (c) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years of receiving the GED diploma.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5) [(4)](a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify KHEAA of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Requirements for Cumulative Grade Point Average Calculation. (1) A participating institution shall submit a cumulative grade point average for an eligible postsecondary education student as set forth in KRS 164.7881(4)(c) for each award period a student is enrolled at that institution.

(2) The KHEAA annually shall determine whether an eligible postsecondary education student has previously enrolled at another participating postsecondary education institution.

(a) If an eligible postsecondary education student has previously been enrolled in a participating institution, then the KHEAA shall determine:

- 1. The total quality points and total credit hours earned by an eligible postsecondary education student; and

2. The continuing eligibility of a student to receive a scholarship by calculating a cumulative grade point average.

(b) The cumulative grade point average shall be calculated by taking the total quality points earned by an eligible postsecondary education student regardless of the institution where a student is or has enrolled and then by dividing those total quality points by the total credit hours taken by the student.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The CPE annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The KDE and the KHEAA annually, by June 15, shall provide to the CPE a budget proposal indicating the amount of funds requested and a detailed listing of the expenditures necessary to operate the program.

(3) The CPE shall notify the KDE and the KHEAA of the amount of funds available for the next fiscal year no later than April 30 of the fiscal year preceding the fiscal year that funds are to be made available.

(4) The CPE shall develop an allotment schedule for the release of the administrative funds and shall notify the KDE and the KHEAA of that schedule.

GORDON K. DAVIES, President
DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: June 13, 2002

FILED WITH LRC: June 14, 2002 at 9 a.m.

PUBLIC HEARING: A public hearing on 13 KAR 2:090, Kentucky Educational Excellence Scholarship (KEES) Program, shall be held on July 23, 2002, at 10 a.m. at the Council on Postsecondary Education, Conference Room B. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 2002, five days prior to the hearing, of their intent to attend. If no notification 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: Barbara Cook, Associate, Academic Affairs, Council on Postsecondary Education, Suite 320, 1024 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-1555, fax (502) 573-1535.

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: Thé KEES Program provides scholarships for graduates of Kentucky high schools who earn certain grade point averages.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 164.7874 through 164.7881.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides details to students, parents, local schools, KHEAA and KDE in support of implementing the statutory 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: The amendment provides a mechanism for high school students whose parents are in the military and who attend school out-of-state to receive credit toward the KEES award. This was mandated by SB 74 (2002 regular session.) The amendment also

provides for a new mechanism to calculate cumulative GPA and creates a mechanism for identifying equivalent undergraduate academic programs.

(b) The necessity of the amendment to this administrative regulation: An amendment is necessary to incorporate legislative changes made in the 2002 regular session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms explicitly to the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides direction to students, local schools, and KHEAA. The amendment to the regulation conforms the regulation to that statutory change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The primary organizations affected by this regulation are KHEAA, KDE, public and private postsecondary education institutions, and local school districts. Students, parents and prospective students will indirectly benefit from 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: There is a financial impact associated with expanding the program to out-of-state students of military families. It is impossible to accurately assess this impact at this time.

(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: 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

(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 appropriate under these circumstances.

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Blackburn Correctional Complex.

Section 1. Incorporation by Reference. (1) "Blackburn Correctional Complex Policies and Procedures", June 12, 2002 [December 42, 2004], is incorporated by reference. Blackburn Correctional Complex Policies and Procedures:

BCC 01-07-01 Extraordinary Occurrence Reports (Amended 6/12/02)
BCC 01-09-01 Legal Assistance for Staff
BCC 01-11-01 Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01 Relationships with Public, Media, and Other Agencies (Amended 6/12/02)
BCC 01-13-02 Public Information and News Media Access

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BCC 01-15-01	Internal Affairs Office	BCC 13-15-01	Informed Consent
BCC 01-16-01	Tours of Blackburn Correctional Complex	BCC 13-16-01	Health Records
BCC 01-19-01	Inmate Access to BCC Staff	BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 02-01-01	Inmate Canteen	BCC 13-19-01	Physicians Referrals and Continuity of Care
BCC 02-02-01	Fiscal Responsibility (Amended 6/12/02)	BCC 13-20-01	Chronic and Convalescent Care
BCC 02-02-02	Fiscal Management: Accounting Procedures	BCC 13-22-01	Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 02-02-03	Fiscal Management: Checks ((Amended 12/12/01))	BCC 14-01-01	Office of Public Advocacy and Attorney Visits ((Amended 12/12/01))
BCC 02-02-04	Fiscal Management: Budget (Amended 6/12/02)	BCC 14-04-01	Inmate Rights and Responsibilities
BCC 02-02-05	Fiscal Management: Insurance	BCC 15-01-01	Restricted Areas ((Added 12/12/01))
BCC 02-02-06	Fiscal Management: Audits	BCC 15-02-01	Inmate Pass System to Restricted Areas ((Added 12/12/01))
BCC 02-04-01	Billing Method for Specialized Health Services	BCC 15-02-02	Room Assignment
BCC 02-05-01	Property Inventory	BCC 15-03-01	Rules and Regulations for Dormitories
BCC 02-06-01	Purchasing	BCC 15-04-01	Population Counts and Count Documentation ((Added 12/12/01))
BCC 02-07-01	Inmate Personal Accounts (Amended 6/12/02)	BCC 15-05-01	Extra Duty Assignments ((Amended 12/12/01))
BCC 04-03-01	Educational Assistance Program	BCC 16-01-01	Inmate Furloughs
BCC 05-01-01	Inmate Participation in Authorized Research	BCC 16-02-01	Inmate Visiting ((Amended 12/12/01))
BCC 06-02-01	Release of Records	BCC 16-03-02	Outgoing Inmate Packages
BCC 06-02-02	Offender Records ((Amended 12/12/01))	BCC 16-03-03	Inmate Correspondence ((Amended 12/12/01))
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board	BCC 17-02-01	Inmate Personal Property
BCC 08-02-01	Natural Disaster Plan (Tornado)	BCC 17-03-01	Processing of New Inmates From Local Jails
BCC 08-03-01	Emergency Preparedness Plan Manual (Amended 6/12/02)	BCC 18-01-01	Classification of the Inmate
BCC 08-04-01	Fire Safety Plan, Drills and Related Duties ((Amended 12/12/01))	BCC 19-01-01	Inmate Work Programs
BCC 08-05-01	Duties of Fire Safety and Sanitation Officer	BCC 19-02-01	Classification of Inmates to Governmental Service Program
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials	BCC 19-03-01	Correctional Industries
BCC 09-01-01	Inclement Weather or Emergency Conditions Operation ((Added 12/12/01))	BCC 20-01-01	Blackburn Education Center (Amended 6/12/02) (Academic and Vocational School)
BCC 09-02-03	Regulation of Inmate Movement ((Added 12/12/01))	BCC 20-04-01	Educational Program Evaluation
BCC 09-03-01	Inmate Identification	BCC 20-05-01	Educational Program Planning (Amended 6/12/02)
BCC 09-10-03	Development of Institutional Post Orders	BCC 20-06-01	Academic and Vocational Curriculum
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates	BCC 21-01-01	Library Services
BCC 09-16-01	Security Activity Log ((Added 12/12/01))	BCC 21-01-02	Audio or Video Tape Court Transcripts
BCC 09-18-01	Use of State Vehicles and Staff-owned Vehicles	BCC 22-01-01	Arts and Crafts/Production and Sale of Items
BCC 09-19-01	Duties and Responsibilities of the Institutional Captain	BCC 22-02-01	Privileged Trips
BCC 10-01-02	Temporary Segregation Holding Area	BCC 22-03-01	Recreational Employees
BCC 11-01-01	Menu and Special Diets	BCC 22-04-01	Recreation and Inmate Activities
BCC 11-02-01	Food Service: Inspection, Health Protection and Sanitation	BCC 22-04-02	Inmate Clubs and Organizations
BCC 11-03-01	Food Service: Meals	BCC 22-04-03	Conducting Inmate Organizational Meetings and Programs
BCC 11-04-01	Dining Room Guidelines	BCC 22-04-04	Recreation Program Availability
BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument and Utensil Control	BCC 22-04-05	Supervision of Leisure-time Craft Club Activities and Materials
BCC 11-06-01	Purchasing, Storage and Farm Products	BCC 22-06-01	Music Club
BCC 11-07-01	Food Service Operations Manual	BCC 22-09-01	Use of Inmates in Recreation Programs
BCC 12-02-01	Personal Hygiene Items (Amended 6/12/02)	BCC 23-01-01	Religious Services
BCC 12-02-02	Clothing, Linens, Bedding Issuance and Shower Facilities (Amended 6/12/02)	BCC 24-01-01	Duties and Responsibilities of Classification and Treatment Officers
BCC 12-05-01	Barber Shop Services	BCC 24-02-01	Duties and Responsibilities of the Unit Director and Assistant to the Unit Director
BCC 12-06-01	BCC Housekeeping Plan	BCC 24-03-01	Social Services
BCC 13-01-01	Sick Call and Pill Call (Amended 6/12/02)	BCC 25-01-01	Inmate Check Out Procedure
BCC 13-02-01	Administration and Authority for Health Services	BCC 25-05-01	Supplemental Parole Progress Reports
BCC 13-03-01	Provisions of Health Care Delivery	BCC 26-01-01	Citizen Involvement and Volunteer Service Program.
BCC 13-04-01	Licensure and Training Standards		
BCC 13-05-01	Medical Alert System		
BCC 13-06-01	Health Care Practices (Amended 6/12/02)		
BCC 13-07-01	Emergency Medical Care Plan		
BCC 13-07-02	Emergency and Specialized Health Services		
BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent		
BCC 13-08-01	Inmate Health Screening and Evaluation		
BCC 13-09-01	Prohibition on Medical Experimentation		
BCC 13-10-01	Dental Services		
BCC 13-11-01	Suicide Prevention and Intervention Program		
BCC 13-12-01	Use of Pharmaceutical Products		
BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs		
BCC 13-13-01	Inmate Health Education		
BCC 13-14-01	Management of Serious and Infectious Diseases		

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

VERTNER L. TAYLOR, Commissioner

APPROVED BY AGENCY: June 10, 2002

FILED WITH LRC: June 13, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 2002, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400. Individuals interested in attending this hearing shall notify this agency in writing by July 15, 2002, 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation.

CONTACT PERSON: Jack Damron, Staff Attorneys, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (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 governing the operation of the Blackburn Correctional Complex including the rights and responsibilities of Blackburn Correctional Complex employees and the inmate population.

(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 operations of Blackburn Correctional Complex.

(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 Blackburn Correctional Complex employees and the inmate population as to their duties, rights, privileges and responsibilities.

(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 shall bring Blackburn Correctional Complex in compliance with ACA Standards, show compliance with CPP, and show actual practice of the institution.

(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 Blackburn Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: This will help Blackburn Correctional Complex to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 114 employees of the correctional institutions, 547 inmates, 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: Blackburn Correctional Complex employees and inmate population will have a clearer understanding of the policies and areas of responsibility.

(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 2002 - 2004 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 impli-

cated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)

501 KAR 6:150. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470(2), 439.590, 439.640(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470(2), 439.590, and 439.640(2) 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 Eastern Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) ~~[(a)]~~ Eastern Kentucky Correctional Complex Policies and Procedures, June 12, 2002 ~~[April 40, 2004]~~, is incorporated by reference.

~~[(b) This material 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)]~~ Eastern Kentucky Correctional Complex Policies and Procedures include:

- ~~[EKCC 01-01-01 Institutional Legal Assistance (Deleted 6/12/02)]~~
- EKCC 01-02-01 Public Information and News Media Access
- EKCC 01-06-01 Inmate Death (Amended 6/12/02)
- EKCC 01-06-02 Crime Scene Camera
- EKCC 01-07-01 Institutional Tours of EKCC
- EKCC 01-07-02 EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies
- EKCC 01-07-03 Outside Consultation and Research
- EKCC 01-08-01 Monthly Reports
- EKCC 01-09-01 Duty Officer Responsibilities (Amended 6/12/02)
- EKCC 01-10-01 Annual Planning Document and Conference
- EKCC 01-10-02 Organization and Assignment of Responsibility
- EKCC 01-10-03 Institutional Planning
- EKCC 01-13-01 Organization of Operations Manual (Amended 6/12/02)
- EKCC 01-13-02 Monitoring of Operations, Policies and Procedures
- EKCC 01-13-03 Formulation and Revision of EKCC Operating Procedure (Amended 6/12/02) ~~[Procedures]~~
- EKCC 01-13-04 Meetings Conducted and Their Purpose
- EKCC 02-01-02 Inmate Canteen (Amended 6/12/02)
- EKCC 02-02-01 Fiscal Management: Agency Funds (Amended 6/12/02)
- EKCC 02-05-01 Fiscal Management: Budget
- EKCC 02-08-01 Property Inventory
- EKCC 02-08-02 Warehouse Operation and Inventory Control
- EKCC 02-08-03 Inventory Control, Nonexpendable Items
- EKCC 02-08-04 Warehouse Policy and Procedure
- EKCC 02-11-01 Purchase and Supply Requisition
- EKCC 02-12-01 Fiscal Management: Audits
- EKCC 02-13-01 Fiscal Management: Accounting Procedures (Amended 6/12/02)
- EKCC 02-14-01 Screening Disbursements from Inmate Personal Accounts (Amended 6/12/02)
- EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
- EKCC 04-02-01 Emergency Preparedness Training
- EKCC 04-02-02 Advisory Training Committee
- EKCC 05-01-01 Inmate Participation in Authorized Research

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EKCC 05-02-01 Information System
 EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
 EKCC 06-03-01 Case Record Management
 EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions
 EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release
 EKCC 10-02-03 Grooming Standards for Special Management
 EKCC 11-02-01 Meal Planning for General Population
 EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products
 EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets
 EKCC 11-04-01 Food Service: Inspections and Sanitation
 EKCC 11-04-02 Medical Screening of Food Handlers
 EKCC 11-05-01 Food Service: Security
 EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities
 EKCC 11-07-01 Dining Room Guidelines
 EKCC 11-08-01 OJT Food Service Training Placement
 EKCC 12-01-01 Vermin and Insect Control
 EKCC 12-02-01 Inmate Dress and Use of Access Areas
 EKCC 13-01-01 Pharmacy Policy
 EKCC 13-02-01 Emergency Medical Procedure
 EKCC 13-02-03 Consultations
 EKCC 13-02-04 Medical Services
 EKCC 13-02-05 Health Evaluations
 EKCC 13-02-06 Sick Call
 EKCC 13-02-07 First Aid Kits
 EKCC 13-05-01 Aids and Hepatitis B
 EKCC 13-07-01 Serious Illness, Major Injuries, Death
 EKCC 13-08-01 Psychiatric and Psychological Services
 EKCC 13-08-02 Psychiatric and Psychological Services Team
 EKCC 13-08-03 Suicide Prevention and Intervention Program
 EKCC 13-08-04 Detoxification
 EKCC 13-09-01 Dental Services for Special Management Units
 EKCC 13-10-01 Optometric Services
 EKCC 13-12-02 Resident Transfer/Medical Profiles
 EKCC 13-13-01 Syringes, Needles and Sharps Control
 EKCC 13-14-01 Fire and Emergency Evacuation Plan
 EKCC 13-15-01 Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements
 EKCC 13-16-01 Medical Records
 EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule
 EKCC 14-04-01 Inmate Legal Services
 EKCC 14-06-01 Inmate Grievance Procedure
 EKCC 14-07-01 Inmate Rights and Responsibilities
 EKCC 15-01-01 Hair and Grooming Standards: Inmate Barber Shop
 EKCC 15-02-01 Restricted Wing
 EKCC 15-05-01 Restoration of Forfeited Good Time
 EKCC 15-06-01 Due Process/Disciplinary Procedure
 EKCC 16-01-01 Inmate Visiting
 EKCC 16-02-01 Inmate Correspondence
 EKCC 16-03-01 Inmate Telephone Procedures
 EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff
 EKCC 16-05-02 Unit Bulletin Boards
 EKCC 17-01-01 Authorized Inmate Personal Property
 EKCC 17-01-02 Personal Property Control
 EKCC 17-02-01 Assessment/Orientation
 EKCC 17-04-01 Inmate Reception Process at the EKCC
 EKCC 18-01-01 Inmate Classification
 EKCC 18-10-01 Parole Progress Report
 EKCC 18-13-01 Meritorious Housing
 EKCC 18-13-02 Restricted Wing - Enhanced Supervision Unit ~~(Added 2/13/01 and amended 4/10/01)~~
 EKCC 18-13-03 Enhanced Supervision Unit
 EKCC 18-13-04 Minimum Security Unit: Operating Procedures and Living Conditions (Added 6/12/02)
 EKCC 19-04-01 Inmate Work Program

EKCC 20-01-01 Educational Program
 EKCC 21-01-01 Library Services
 EKCC 22-02-01 Recreation and Inmate Activities
 EKCC 23-01-01 Religious Services
 EKCC 23-01-02 Muslim Services - Ramadan
 EKCC 24-01-01 Social Services and Counseling Program
 EKCC 24-02-01 Pathfinders (Added 6/12/02)
 EKCC 25-02-01 Inmate Discharge Procedure
 EKCC 25-03-01 Prerelease Preparation
 EKCC 25-04-01 Inmate Furloughs
 EKCC 25-06-01 Community Center Program
 EKCC 26-01-01 Citizens Involvement and Volunteers

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

VERTNER L. TAYLOR, Commissioner

APPROVED BY AGENCY: June 10, 2002

FILED WITH LRC: June 13, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 2002, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400. Individuals interested in attending this hearing shall notify this agency in writing by July 15, 2002, 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation.

CONTACT PERSON: Jack Damron, Staff Attorneys, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (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 governing the operation of the Eastern Kentucky Correctional Complex regarding the rights and responsibilities of Eastern Kentucky Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation governs every aspect of the operations of Eastern Kentucky Correctional Complex.

(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 Eastern Kentucky Correctional Complex employees and the inmate population as to their duties, rights, privileges and responsibilities.

(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 shall bring Eastern Kentucky Correctional Complex in compliance with ACA Standards, show compliance with CPP, and show actual practice of the institution.

(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 the Eastern Kentucky Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: This will help Eastern Kentucky Correctional Com-

plex to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 396 employees of Eastern Kentucky Correctional Complex, 1654 inmates, and all visitors to the Eastern Kentucky Correctional Complex.

(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 implementation of these policies within the regulation shall ensure a clearer understanding of the policies by employees and the inmate population, thereby impacting the security and safety of the Eastern Kentucky Correctional Complex.

(5) Provide and 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 2002 - 2004 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 or 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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Vehicle Enforcement
(Amendment)

601 KAR 1:005. Safety administrative regulation.

RELATES TO: KRS [~~Chapters~~] 138.665, 281.600, 281.730, 281.750, 281.880, 49 CFR Parts 40, 382-383, 385, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, 281.880 to 281.888, 49 CFR Parts 40, 382-383, 385, 390-397

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Transportation Cabinet to promulgate administrative regulations relating to safety requirements. This administrative regulation establishes requirements for motor carriers operating in Kentucky.

Section 1. Definitions. (1) "City bus" is defined in KRS 281.013(1).

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

- (a) To transport agricultural products from his farm;
- (b) To transport farm machinery or farm supplies to his farm; or
- (c) Generally thought of as farm machinery; and
- (d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(4) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

(5) "Suburban bus" is defined in KRS 281.013(2).

(6) "Utility" means an entity which provides water, electricity, natural gas, sewage disposal, telephone service, television cable, or community antenna service.

Section 2. Governing Federal Regulations. A commercial motor vehicle and its operator meeting the definitions set forth in 49 CFR 390.5 operating for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) 49 CFR Part 40, as effective October 1, 2001 [~~1998 as amended at 63 Fed. Reg. 65428, December 1, 1998~~], Procedures for Transportation Workplace Drug Testing Programs;

(2) 49 CFR Part 382, as effective October 1, 2001 [~~1998~~], Controlled Substances and Alcohol Use and Testing;

(3) 49 CFR Part 383, as effective October 1, 2001 [~~1998~~], Commercial Driver's License Standards; Requirements and Penalties;

(4) 49 CFR Part 385, as effective October 1, 2001 [~~1998 as amended at 63 Fed. Reg. 62957, November 10, 1998~~], Safety Fitness Procedures;

(5) 49 CFR Part 390, as effective October 1, 2001 [~~1998~~], General;

(6) 49 CFR Part 391, as effective October 1, 2001 [~~1998~~], Qualifications of Drivers;

(7) 49 CFR Part 392, as effective October 1, 2001 [~~1998~~], Driving of Motor Vehicles;

(8) 49 CFR Part 393, as effective October 1, 2001 [~~1998~~], Parts and Accessories Necessary for Safe Operation;

(9) 49 CFR Part 395, as effective October 1, 2001 [~~1998~~], Hours of Service of Drivers;

(10) 49 CFR Part 396, as effective October 1, 2001 [~~1998~~], Inspection, Repair and Maintenance; and

(11) 49 CFR Part 397, as effective October 1, 2001 [~~1998~~], Transportation of Hazardous Materials; Driving and Parking Rules.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1)(a) A city or suburban bus shall not be required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Parts 382 and 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 CFR Part 381 for interstate operators.

(2)(a) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education shall not be required to comply with the federal regulations adopted in this administrative regulation.

(b) An operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 CFR Part 381 for interstate operators.

(c) The operator of a vehicle specified in paragraph (a) of this subsection shall meet the requirements of 49 CFR Part 382 relating to drug and alcohol testing.

(3)(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier shall not be required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4)(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours shall not be required to comply with

Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for a transporter of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is operating a vehicle in intrastate commerce shall not be required to be twenty-one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, he shall be at least eighteen (18) years of age.

(6) A utility motor carrier if operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency as defined in 49 CFR 390.5 which requires their employees to work to restore service.

(7) Medical waivers for intrastate drivers.

(a) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(8) Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier which operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate motor carrier identification number on Form TC 95-1, "Kentucky Trucking Application", April 2000 edition or Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition;

(b) Display the assigned intrastate motor carrier identification number and the name [and location] of the motor carrier in the same manner as required pursuant to 49 CFR Part 390.21 except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY".

(9) Notwithstanding 49 CFR Part 391.68(c), a Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers [contrary to 49 CFR Part 391.68(d)] shall not be exempt from the sections of 49 CFR Parts 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his person.

Section 4. Buses. (1) A bus shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) A seat shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) An employee in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator shall take into consideration the health and welfare of his passengers and control his operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial motor vehicle driver or commercial motor vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" issued

by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor vehicle is being operated with improper or invalid registration, [either improperly registered or] without registration or in violation of any safety regulation or requirement, an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3)(a) If a commercial motor vehicle driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a medical examiner as defined in 49 CFR 390.5. The following shall qualify: [Medical examiner is defined in 49 CFR 390.5 as a person who is licensed, certified, or registered, in accordance with applicable state laws and administrative regulations, to perform physical examinations. According to Kentucky state law this shall include the following:]

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor licensed by the Kentucky State Board of Chiropractic Licensure.

Section 8. Interpretations of the Federal Motor Carrier Regulations. The document published by the Federal Highway Administration in the Federal Register at 62 Fed. Reg. 16370 on April 4, 1997 presents official interpretive guidance material for the Federal Motor Carrier Safety Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.

Section 9. [Relief and Safety Demonstration Project. (1) In accordance with Section 344 of the National Highway System Designation Act of 1995 (PL 104-59, 109 Stat. 568 (1995)), until June 10, 2000, the Federal Highway Administration is allowing an operator of a commercial motor vehicle with a gross vehicle weight rating over 40,000 pounds but not more than 26,000 pounds limited exemptions from the motor carrier safety regulations. These exemptions and the criteria for participating in the federal program are set forth in the "Motor Carrier Regulatory Relief and Safety Demonstration Project - QMC Internal Guidance".

(2) A motor carrier approved for participation in this project shall be issued a "Roadside Enforcement Letter" by the Federal Highway Administration.

(3) The Transportation Cabinet shall honor the exemptions of each valid "Roadside Enforcement Letter" if the motor vehicle is being operated under the criteria set forth in the "Motor Carrier

~~Section 10.]~~ Intrastate Safety Rating System. (1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provision of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 CFR Part 385 shall be used by the Transportation Cabinet in issuing a safety rating.

Section 10. [44.] Random Alcohol Testing Rate. Commercial Motor Vehicle employers shall randomly test a percentage of the average number of driver positions employed by them. The applicable percentage shall be determined by the Federal Motor Carrier Safety Administration's Administrator annually as set forth in 49 CFR 382.302. [The 1998 random alcohol testing rate required by 49 CFR Part 382 shall be ten (10) percent.]

Section 11. [42.] Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "North American Uniform Out-Of-Service Criteria" revised April 1, 2001 [1998] by the Commercial Vehicle Safety Alliance;

(b) 62 Fed. Reg. 16370, April 4, 1997;

(c) TC 95-1, revised April, 2000; and

(d) TC 92-150, revised March, 1996. [63 Fed. Reg. 62957, November 10, 1998;

(d) 63 Fed. Reg. 65128, November 25, 1998; and

(e) "Motor Carrier Regulatory Relief and Safety Demonstration Project – OMC Internal Guidance", July 1997 edition issued by the Federal Highway Administration.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [reviewed] at any of the weigh stations operated by the Transportation Cabinet, and [Further, the material may be inspected, copied, or obtained] at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. through 4:30 p.m.

DALE SHROUT, Commissioner
JAMES C. CODELL, III Secretary

HOLLIE SPADE, Assistant General Counsel

APPROVED BY AGENCY: May 17, 2002

FILED WITH LRC: May 23, 2002 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held July 23, 2002, 10 a.m., local prevailing time in the Transportation Cabinet, State Office Building, 10th Floor, Executive Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by July 16, 2002. If no notification of intent to attend the hearing is received by July 16, 2002, 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 July 16, 2002. 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 July 23, 2002. Send written notification of intent to attend public comment hearing or written comments on the administrative regulation to: Hollie B. Spade, Assistant General Counsel, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

Contact person: Hollie Spade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the federal safety standards that have been adopted by this state and are applicable to interstate motor carriers. It also sets forth the safety standards for intrastate carriers. These safety standards include guidelines for passing a medical examination or obtaining some form of medical waiver for the individual driver as well.

(b) The necessity of this administrative regulation: Pursuant to KRS 281.600 the Transportation Cabinet is required regulate motor carriers and to apply the Federal Motor Carrier Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts the federal safety regulations and clarifies other requirements for intrastate compliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Transportation Cabinet in maintaining and enforcing safety standards for motor carriers driving in the Commonwealth.

(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 the state regulation by adopting current federal regulations and eliminating some federal guidelines that are no longer applicable.

(b) The necessity of the amendment to this administrative regulation: It is necessary to adopt the updated federal regulations to remain compliant with the Federal Motor Carrier Act and fulfill the directive of the legislature in KRS 281.600.

(c) How the amendment conforms to the content of the authorizing statutes: It adopts the Federal Motor Carrier Act provisions regarding motor carrier safety.

(d) How the amendment will assist in the effective administration of the statutes: This will allow the Transportation Cabinet to apply and enforce current safety requirements.

(3) List and type the number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect motor carriers directly and will have an indirect impact on the general motoring public. There are an estimated 40,000 motor carriers operating within the state.

(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. These safety standards (both state and federal) will be applicable to motor carriers. Interstate carriers are already subject to these federal provisions and this should not have an impact on their day-to-day operations. This regulation should also have a positive impact on other motorists by maintaining safety on roads and highways that they share with motor carriers.

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

(a) Initially: No known cost.

(b) On a continuing basis: There is ongoing cost related to administration of the motor carrier program within the cabinet and enforcement of motor carrier regulations through vehicle enforcement. These amendments should not increase the current cost for these programs.

(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: The cabinet has not increased fees and does not anticipate a need for increased funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is applied to the extent that these larger vehicles are subject to more stringent regulation with regard to their operation than standard-size vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

- (a) Commercial driver's license standards for the issuance, testing and withdrawal of a CDL;
- (b) Establishes 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;
- (c) Establishes the maximum number of hours a commercial driver may be on-duty and how he must keep a record of the amount of time he has worked;
- (d) Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;
- (e) Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;
- (f) Defines the parts and accessories necessary for the safe operation of a commercial vehicle;
- (g) Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be performed by certified inspectors or mechanics; and
- (h) Driving and parking rules while transporting hazardous materials.

2. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles. Kentucky is stricter with regard to exemptions from medical examination for private motor carriers of passengers. 49 CFR 391.68(c) allows these carriers to avoid medical examination. Section 3(9) of this administrative regulation requires examination "notwithstanding" that provision.

3. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exemptions. The stricter requirement as to medical waivers is not new and has not been changed as a result of this amendment. This stricter standard was adopted out of concern for the safety of passengers.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than these required by the federal mandate? Not applicable.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Vehicle Enforcement
(Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.425, 49 CFR 107, 130, 171-173, 175, 177, 178, 180

STATUTORY AUTHORITY: KRS 174.410(2), 49 CFR Parts

130, 171-173, 175, 177, 178, 180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources (now Health Services), shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation is the result of that directive. ~~[implements these statutory provisions.]~~

Section 1. (1) The following hazardous materials transportation regulations adopted and issued by the United States Department of Transportation ~~[relating to the following subjects]~~ shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

- (a) ~~[(4)]~~ 49 CFR Part 107, effective October 1, 2001 ~~[4998]~~. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.
- (b) ~~[(2)]~~ 49 CFR Part 130 effective October 1, 2001 ~~[4998]~~. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;
- (c) ~~[(3)]~~ 49 CFR Part 171 effective October 1, 2001 ~~[January 4, 4999]~~ as amended by Final 67 Fed. Reg. 13095, March 21, 2002 and 67 Fed. Reg. 15736, April 3, 2002 ~~[Rule 63 Fed. Reg. 57929, October 29, 1998]~~. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(d) ~~[(4)]~~ 49 CFR Part 172 effective October 1, 2001, as amended by 67 Fed. Reg. 13680, March 25, 2002, 67 Fed. Reg. 9926, March 5, 2002, and 67 Fed. Reg. 15736, April 3, 2002 ~~[4998]~~. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

- 1. ~~[(a)]~~ Shipping papers;
- 2. ~~[(b)]~~ Package marking; and
- 3. ~~[(c)]~~ Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(e) ~~[(5)]~~ 49 CFR Part 173 effective October 1, 2001, as amended by 67 Fed. Reg. 15736, April 3, 2002 ~~[4998]~~. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(f) ~~[(6)]~~ 49 CFR Part 175 effective October 1, 2001 ~~[4998]~~. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(g) ~~[(7)]~~ 49 CFR Part 177, effective October 1, 2001 ~~[4998]~~. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(h) ~~[(8)]~~ 49 CFR Part 178 effective October 1, 2001, as amended by 67 Fed. Reg. 15736 ~~[4998]~~. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(i) ~~[(9)]~~ 49 CFR Part 180, effective October 1, 2001, as amended by 67 Fed. Reg. 15736 ~~[4998]~~. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

~~[Section 2. Interpretations of the Federal Hazardous Materials Transportation Regulations. The Question and Answer document by the Research and Safety Programs Administration effective October 1, 1998 presents official interpretive guidance material for the Federal Hazardous Material Transportation Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.]~~

~~Section 3. Material Incorporated by Reference. (1) The following~~

material is incorporated by reference as a part of this administrative regulation:

~~(a) The interpretations of the Federal Hazardous Materials Regulations effective October 1, 1998 are incorporated by reference; and~~

~~(b) 63 Fed. Reg. 57929, October 29, 1998.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, 8 a.m. through 4:30 p.m. week days.

DALE SHROUT, Commissioner
 JAMES C. CODELL, III Secretary
 HOLLIE SPADE, Assistant General Counsel

APPROVED BY AGENCY: May 17, 2002

FILED WITH LRC: May 23, 2002 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held July 23, 2002, 10 a.m., local prevailing time in the Transportation Cabinet, State Office Building, 10th Floor, Executive Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by July 16, 2002. If no notification of intent to attend the hearing is received by July 16, 2002, 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 July 16, 2002. 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 July 23, 2002. Send written notification of intent to attend public comment hearing or written comments on the administrative regulation to: Hollie B. Spade, Assistant General Counsel, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Hollie Spade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the federal safety standards that have been adopted by this state and are applicable to transporters of hazardous materials.

(b) The necessity of this administrative regulation: Pursuant to KRS 174.410 the Transportation Cabinet is responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials. That statute goes on to state that the cabinet will adopt the federal hazardous materials transportation regulations in 49 CFR This amendment will merely update the adopted federal regulations so that Kentucky will be current with the federal safety standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts the federal safety regulations for transporters of hazardous materials and clarifies other requirements for intrastate compliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the guidelines for the Transportation Cabinet in maintaining and enforcing safety standards for transporters of hazardous materials.

(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 the state regulation by adopting current federal regulations and eliminating some federal guidelines that are no longer applicable.

(b) The necessity of the amendment to this administrative regulation: It is necessary to adopt the updated federal regulations to

remain compliant with the federal and fulfill the directive of the legislature in KRS 174.410.

(c) How the amendment conforms to the content of the authorizing statutes: It adopts the federal hazardous materials transportation regulations as required by KRS 174.410.

(d) How the amendment will assist in the effective administration of the statutes: This will allow the Transportation Cabinet to apply and enforce current safety requirements.

(3) List and type the number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all transporters of hazardous materials by highway or air in Kentucky and will indirectly benefit all those who live in the Commonwealth in light of the serious potential for hazard if these procedures are not followed.

(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. Interstate carriers are already subject to these federal provisions and this should not have an impact on their day-to-day operations. This regulation should also have a positive impact on other motorists by maintaining safety on roads and highways that they share with transporters of hazardous materials.

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

(a) Initially: No known cost.

(b) On a continuing basis: There is on-going cost related to administration of the hazardous materials program within the cabinet and enforcement of the incorporated regulations through vehicle enforcement. These amendments should not increase the current cost for these programs.

(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: The cabinet has not increased fees and does not anticipate a need for increased funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is applied to the extent that the restrictions and requirements are different depending on the type of hazardous material being transported and the potential hazard.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171-173, 177, 178, and 180.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 107, 130, 171-173, 177, 178, and 180.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

(a) The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;

(b) Establishes the emergency response information requirements for each transporter of a hazardous material;

(c) Defines the general requirements for shipping and packaging of each type of hazardous material;

- (d) Defines the unacceptable hazardous material shipments on a highway;
 - (e) Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;
 - (f) Establishes shipping container specifications for the transportation of hazardous materials;
 - (g) Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials; and
 - (h) Establishes an oil spill prevention and response plan for all transporters of oils.
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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Amendment)

805 KAR 4:010. Licensing and classification of blasters.

RELATES TO: KRS 351.315, 351.325

STATUTORY AUTHORITY: KRS Chapter 13A, 351.315, ~~Chapter 47,~~ 351.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.315 requires the Department of Mines and Minerals to license blasters. This administrative regulation establishes the licensing requirements and duties of a blaster to effect this law, and establishes the amount of fees to be consistent with KRS 351.315 ~~[those increased by Acts 1992, chapter 462, codified as KRS Chapter 47, Appendix A, Part I, K, 69, page 117].~~

Section 1. (1) The department shall have two (2) classifications of blasting licenses for each of which there shall be a separate test; one (1) termed "Kentucky blaster's license," and one (1) termed "limited Kentucky blaster's license."

(2) Persons holding a limited Kentucky blaster's license shall not conduct a blasting operation in which more than five (5) pounds of explosives are used in a single charge.

(3) Persons applying for either a "Kentucky blaster's license" or a "limited Kentucky blaster's license" shall submit a nonrefundable application fee of forty (40) dollars with the prescribed application form. Upon successfully passing the examination and satisfying the experience requirement of KRS 351.315, a license shall be issued upon the payment of an additional fee of twenty-five (25) dollars.

(4) Each blaster shall be required to renew his license every three (3) years [each year] by application to the department, which application shall be accompanied by a fee of sixty (60) dollars, and documentation verifying that he has completed the hours of blaster retraining required in KRS 351.315(4) [twenty (20) dollars].

(5) If a licensed blaster is not in violation of any final administrative or court order concerning blasting-related matters at the time he makes application for renewal of his license, the department shall renew that license.

(6) A blaster who fails to renew his Kentucky blaster's ~~[blasters]~~ license within five (5) years of the expiration date of his last valid license shall be required to reapply for a license and retake the blasters examination in a manner established in KRS 351.315. Blasters not in the above category may have their licenses renewed by paying to the department a sum equal to the annual renewal fees for the years of nonrenewal.

(7) The commissioner may grant a thirty (30) day nonrenewable blaster's license to any person qualified under KRS 351.315(3) upon the payment of a twenty-five (25) dollar fee.

(8) For the purpose of licensure, a blaster is:

- (a) A person who makes any or all of the following decisions:
 1. Decides hole size, spacing, or depth;
 2. Decides total quantity of explosives;
 3. Decides quantity of explosives in each hole;
 4. Decides timing delays to be used.

(b) He shall also be present when the charge is detonated and either physically detonate the charge or give the order to detonate the charge.

(c) He shall complete and sign a record for each blast as required in KRS 351.360.

(9) A licensed blaster shall not take any instruction on the activities described in subsection (8) of this section from a person not holding a blaster's license if compliance with such instruction may result in an unlawful act or unlawful effect of the blast.

(10) Anyone failing a blaster's examination may retake the examination after thirty (30) days without paying another application fee. A person failing the examination ~~[of]~~ a second time shall ~~[must]~~ resubmit his application form and pay the fee required in subsection (3) of this section.

(11) Persons involved in seismic exploration of the subsurface geology and detonating explosives solely for the purpose of monitoring seismic waves generated by such a detonation must hold either a Kentucky blaster's ~~[blasters]~~ license or a limited Kentucky blaster's license. The five (5) pound limitation in subsection (2) of this section may be waived for the purpose of seismic exploration based upon a written request to the department.

(12) Persons engaged in blasting operations in oil production and detonating explosives for the purpose of enhancing oil production, cutting casing, or other similar purposes, where the explosives are placed in an oil well, must hold either a Kentucky blaster's license or a limited Kentucky blaster's license. The five (5) pound limitation in subsection (2) of this section may be waived for the purpose of oil well shooting based upon a written request to the department. The use of shaped charges of less than ninety (90) grams weight to perforate casing or strata does not meet the definition of blasting operation and does not require either license.

(13) Application for the reciprocal license described in KRS 351.315(3) shall be on a form furnished by the department and accompanied by a fee of sixty (60) dollars.

FRANCIS X. DELZER, Commissioner

EUGENE D. ATTKISSON, Attorney

APPROVED BY AGENCY: May 30, 2002

FILED WITH LRC: June 6, 2002 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Wednesday, July 24, 2002, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, 1025 Capital Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2002, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Larry C. Schneider, Director, Division of Explosives and Blasting, Kentucky Department of Mines and Minerals, PO 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40602, phone (502) 573-0140, fax (502) 573-1099.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry C. Schneider

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the criteria for a person to become a licensed blaster in the Commonwealth and to maintain this license. It details the experience and testing requirements involved. Furthermore, it defines what the duties and responsibilities of such a licensed blaster are, and also sets out conditions where a limited blaster's license may be used in place of a general blaster's license.

(b) The necessity of this administrative regulation: KRS 351.315 establishes a Kentucky blaster's license and a limited Kentucky blaster's license and sets out the general duties and responsibilities.

of such a licensed blaster. It also sets qualifications that an applicant must meet to become licensed. This administrative regulation implements the provisions of this statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation describes the procedures and process of obtaining a Kentucky blaster's license, using the minimum criteria set out in KRS 351.315. It interprets and prescribes the duties assigned to a licensed blaster and distinguishes the conditions wherein a limited blaster's license may be used.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in effectively administering the statute by prescribing the procedures that an applicant must complete in order to obtain a blaster's license. It also describes his benefits and responsibilities in more specific terms.

(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 substantive portion of this amendment changes the time for blaster's license renewal from 1 year to 3 years, and changes the renewal fee from \$20 to \$60. It also requires the blaster to provide documentation verifying that he has met the required training during the past 3 years.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect the changes adopted in HB 636, passed in the 2000 legislative session. That bill changed the time frame of licensure, changed the fees from \$20 annually to \$60 every 3 years, and also mandated that licensed blasters attend specified hours of retraining every 3 years.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the language of this administrative regulation to reflect the changes made to KRS 351.315.

(d) How the amendment will assist in the effective administration of the statutes: The terms and conditions of licensure have been changed in the statute. This amendment will remove the old language from the administrative regulation and substitute new language to conform with KRS 351.315, which will clarify the current requirements for applicants to obtain and keep a blaster license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed administrative regulation will affect the approximately 3000 individuals who are licensed blasters in the Commonwealth, and several hundred individuals who apply for such a license each year.

(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 in the regulation will not impact the above group, since it is conforming to the requirements already set by KRS 351.315. The changes made in the regulation are to update the requirements to conform with the statute.

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

(a) Initially: There will be no additional cost to implement this regulation.

(b) On a continuing basis: There will be no additional cost to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding for the implementation will be the general fund money and the trust and agency funds assigned to the Division of Explosives and Blasting by the legislative budget. This amendment adds no additional requirement for funds over and above what is normally appropriated for the operation of the Division of Explosives and Blasting.

(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 need to increase any fees to fund or implement this amendment to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation indirectly establishes fees, in that it specifies

the fees contained in KRS 351.315.

(9) TIERING: Is tiering applied? Tiering was not used in this regulation since the statute that mandates the fees, the terms of licensure, and the required training of licensed blasters makes no provision for distinguishing these individuals by categories. There is no category or class of blasters requiring retraining that could be treated differently than any other insofar as reporting their training or renewing their license is concerned.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Amendment)

805 KAR 4:040. Instrumentation.

RELATES TO: KRS 351.320, 351.330, ~~351.340,~~ 351.990

STATUTORY AUTHORITY: KRS 351.330 ~~351.340~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.330 requires the Department of Mines and Minerals to limit ground vibrations. This administrative regulation effects the provisions of that law.

Section 1. Instrumentation. (1) ~~All portable displacement seismographs currently in use will be approved until further notice by the Department of Mines and Minerals.~~

~~(2) A direct reading velocity instrument shall be approved by the Department of Mines and Minerals only if it has a frequency range equal or greater than ~~of~~ five (5) cycles per second to 150 cycles per second ~~or greater~~, a velocity range from zero to two (2.0) inches per second or greater, adheres to design criteria for portable seismographs as outlined in USBM RI-5708, and USBM RI-6487, and meets such standards as are established from time to time by the Department of Mines and Minerals.~~

~~(3) Instruments of both the direct reading velocity type and the displacement type will be approved by the Department of Mines and Minerals for use as follows:~~

~~(a) Particle velocity reading may be calculated from results obtained by a displacement instrument or obtained from an approved direct reading velocity instrument in any blasting operation where all of the following conditions exist:~~

- ~~1. Recording distance is over 200 feet from the blast;~~
- ~~2. Scaled distance is numerically greater than twenty five (25);~~
- ~~3. Frequency range is forty (40) cycles per second or less.~~

~~(b) A direct reading velocity instrument will be required in any blasting operation where all of the following conditions exist:~~

- ~~1. Recording distance is less than 200 feet from the blast;~~
- ~~2. Scaled distance is numerically less than fifty (50).~~

~~(c) A direct reading velocity instrument will be required in any blasting operation where all the following conditions exist:~~

- ~~1. Recording distance is more than 200 feet from the blast;~~
- ~~2. Scaled distance is numerically less than twenty five (25).~~

~~(d) A direct reading velocity instrument will be required in any blasting operation where all of the following conditions exist:~~

- ~~1. Recording distance is more than 200 feet from the blast;~~
- ~~2. Frequency range is in excess of forty (40) cycles per second;~~

~~(e) Scaled distance is defined as:~~

$$D_s = D / \text{square root of } W$$

~~Where D is the actual distance in feet and W is the weight of explosives in pounds per delay period of eight (8) milliseconds or greater.]~~

~~(2) [(4)] Any seismic reports submitted to this office for compliance or petition must be made using a direct-reading velocity seismograph and accompanied by the most recent calibration report of the ~~of~~ seismograph.~~

~~(3) [(5) Beginning January 1, 1977,] All velocity seismographs used for compliance or petition must have internal calibration capability and shall be operated in accordance with the recommendations included in Section 2(1) of this administrative regulation.~~

Section 2. Incorporation by Reference. (1) The "ISEE Field Practice Guidelines for Blasting Seismographs" published by the International Society of Explosive Engineers and included as Ap-

pendix K of the ISEE Blaster's Handbook, 17th edition, Second Printing, 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Mines and Minerals, 1025 Capital Center Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m..

FRANCIS X. DELZER, Commissioner
EUGENE D. ATTKISSON, Attorney

APPROVED BY AGENCY: May 30, 2002

FILED WITH LRC: June 6, 2002 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Wednesday, July 24, 2002, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, 1025 Capital Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2002, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Larry C. Schneider, Director, Division of Explosives and Blasting, Kentucky Department of Mines and Minerals, PO 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40602, phone (502) 573-0140, fax (502) 573-1099.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry C. Schneider

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes specifications for the type of seismograph that must be used to monitor ground vibrations and air blasts from blasting operations. It also provides guidelines for the use of this equipment to ensure that the reading taken with the equipment is accurate.

(b) The necessity of this administrative regulation: Seismograph equipment is necessary to demonstrate compliance with KRS 351.330(3). Guidelines for the type of equipment used and the method of operating such equipment ensure that the data obtained are accurate and reproducible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.330(3) requires that the department ensure that certain limits on ground vibrations not be exceeded. In order to monitor these ground vibrations, accurate seismograph readings are necessary. KRS 351.330(7) states that instruments used to monitor the peak particle velocity of ground movement shall be limited to the types approved by the department. This administrative regulation sets the standards for these instruments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the standards for constructing and using seismographs for monitoring blasting operations. This will enable both the department and the seismograph operators to ensure that the readings taken are accurate.

(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 the specifications to match the instruments that are currently available and being used in the industry. The original standards were written in 1976 and are very much outdated. The material incorporated by reference is to ensure that these newer or more modern seismographs are used in a consistent manner in order to obtain reproducible data.

(b) The necessity of the amendment to this administrative regulation: The specifications currently in the administrative regulation are very outdated and virtually meaningless to those in the industry,

particularly when discussing displacement seismographs. Some types of equipment referenced in the regulation have not been available for at least 25 years and are no longer used anywhere in the blasting industry. The material incorporated by reference is provided to ensure that the measurements taken by various people with various seismographs will be as uniform as possible.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 51.330 by specifying which instruments can be used and the manner in which they are to be used.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will modernize the specifications for manufacture and use of blasting seismographs. This will ensure that the readings taken are more accurate and valid for making enforcement decisions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation, as proposed for amendment, will affect the 3000 individuals who are licensed blasters in the Commonwealth and those persons engaged in the blast seismology industry.

(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 require that licensed blasters and persons engaged in the blast seismology industry operate the equipment in a more uniform manner and in accordance with minimum standards.

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

(a) Initially: This proposed amendment would produce no significant cost to implement initially.

(b) On a continuing basis: There will no additional costs involved in implementing this administrative regulation now or in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funds for enforcement of this regulation is the general state budget monies appropriated to the department. However, this regulation will have no additional costs beyond the monitoring and enforcement activities currently being conducted.

(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 are no fees associated with this administrative regulation, nor will it require any new or additional fees.

(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 was not used in this administrative regulation, since there are no logical or reasonable categories into which seismograph monitors can be divided.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Explosives and Blasting (Amendment)

805 KAR 4:100. Surface transportation of explosives.

RELATES TO: KRS 351.350, 14 CFR Part 103, 46 CFR Parts 146-149, 49 CFR Parts 171-179, 49 CFR Parts 390-397

STATUTORY AUTHORITY: KRS Chapter 13A, 351.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives, which have ~~has~~ a direct bearing on safety to life and property. This administrative regulation effects the provisions of that law.

Section 1. (1) Transportation of explosives, blasting agents, and blasting supplies, shall be in accordance with the provisions of Department of Transportation regulations contained in 14 CFR Part

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103, Air Transportation; 46 CFR Parts 146-149, Water Carriers; 49 CFR Parts 171-179, Highways and Railways; and 49 CFR Parts 390-397, Motor Carriers.

(2) Motor vehicles or conveyances transporting explosives shall only be driven by, and be in the charge of, a licensed driver who is physically fit. He shall be familiar with the local, state and federal regulations governing the transportation of explosives.

(3) No person shall smoke, or carry matches or any other flame-producing device, nor shall firearms or loaded cartridges be carried while in or near a motor vehicle or conveyance transporting explosives, blasting agents, and blasting supplies.

(4) Explosives or blasting agents shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable material be carried on the same vehicle as explosives.

(5) Explosives or blasting agents shall be transported in separate vehicles from detonators unless:

(a) The detonators are placed in a type 2 or type 3 magazine secured within the body of the truck; or

(b) The detonators and explosives are separated by four (4) inches of hardwood, and the detonators are totally enclosed or confined by the hardwood construction; or

(c) The detonators are placed in suitable containers or compartments constructed in accordance with the Institute of Makers of Explosives Safety Library Publication No. 22, incorporated in Section 2 of this administrative regulation ~~(entitled "IME Standard for the Safe Transportation of Electric Blasting Caps in the Same Vehicle with Other Explosives", revised January 1, 1985, and incorporated herein by reference. This document may be reviewed or copied at the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 204, P.O. Box 2244, Frankfort, Kentucky 40602-2244 during normal business hours from 8 a.m. to 4:30 p.m.)~~

(6) Vehicles used for transporting explosives shall not exceed their cargo-carrying capacity ~~[be strong enough to carry the load without difficulty]~~, and shall be in good mechanical condition.

(7) When high ~~[Class A, B, or C]~~ explosives or detonators are transported by a vehicle with an open body, a Class II magazine or original manufacturer's container shall be securely mounted within the bed to contain the cargo. No container of explosives or detonators shall be stacked higher than the sides or the tailgate of the vehicle. Blasting agents shall be loaded in a stable manner so that they cannot fall from the vehicle.

(8) All vehicles used for the transportation of explosives shall have tight floors and any exposed spark-producing metal on the inside of the body shall be covered with wood, or other nonsparking material, to prevent contact with containers of explosives.

(9) Every motor vehicle or conveyance used for transporting any quantity of explosive materials on public highways shall display all placards required by the U.S. Department of Transportation. Vehicles transporting high explosives in areas other than public highways ~~[Class A or B explosives]~~ shall be marked or placarded on both sides, front and rear, with either the word "explosives" in red letters not less than four (4) inches in height, on white background, or the appropriate U.S. Department of Transportation ~~[Cabinet-approved orange and black, square on point, explosives]~~ placards.

(10) Every vehicle or conveyance transporting blasting agents in areas other than public highways shall be placarded on front, back and both sides with the words "Blasting Agent" or the appropriate U.S. Department of Transportation placards.

(11) Each vehicle used for transportation of explosives shall be equipped with a fully charged fire extinguisher, in good condition. For vehicles with a gross weight of less than 14,000 pounds, an Underwriters Laboratory-approved extinguisher or combination of fire extinguishers having a total capacity of at least 4-A:20-B:C ~~[of not less than ten (10) ABC]~~ rating shall ~~[will]~~ meet the minimum requirement. For vehicles with a gross weight of 14,000 pounds or greater, an Underwriters Laboratory-approved extinguisher or combination of fire extinguishers having a total capacity of at least 4-A:70-B:C shall meet the minimum requirement. The driver shall be trained in the use of the extinguisher on his vehicle.

(12) Fire extinguishers shall be designed and maintained to allow a visual determination that they are fully charged, and shall be located on or in the vehicle in a manner so that they are accessible for immediate use.

(13) Motor vehicles or conveyances carrying explosives, blasting agents, or blasting supplies~~[]~~ shall not be taken inside a garage or shop for repairs or servicing.

(14) ~~[(43)]~~ No motor vehicle transporting explosives shall be left unattended.

Section 2. Incorporation by Reference. (1) The "Institute of Makers of Explosives Safety Library Publication No. 22, Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials", revised May, 1993 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Mines and Minerals, 1025 Capital Center Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

FRANCIS X. DELZER, Commissioner

EUGENE D. ATTKISSON, Attorney

APPROVED BY AGENCY: May 30, 2002

FILED WITH LRC: June 6, 2002 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Wednesday, July 24, 2002, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, 1025 Capital Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2002, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Larry C. Schneider, Director, Division of Explosives and Blasting, Kentucky Department of Mines and Minerals, PO 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40602, phone (502) 573-0140, fax (502) 573-1099.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry C. Schneider

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation effects the provisions of KRS 351.335 by specifying the requirements for transporting explosive materials in a vehicle, both on and off public highways. It sets standards for the vehicle construction, methods of loading explosives as cargo, and the warning signs and fire extinguishers that must be on the vehicle.

(b) The necessity of this administrative regulation: In order to ensure the safety of the public and the drivers of vehicles carrying explosives, it is necessary that minimum safety standards be set.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.335(1) requires the department to promulgate regulations concerning the transportation of explosive materials. This administrative regulation is responsive to that requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to ensure that explosives are transported safely, standards must be established for the vehicles used, the method of loading those vehicles and the safety equipment and warning signs on those vehicles. This administrative regulation establishes such standards.

(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 to this regulation updates the standard for transporting detonators on the same vehicle with other explosives. The amendment also deletes references to Class A, B, or C explosives and refers to these materials by their generic name of "high explosives" or "blasting agents". The amendment will also permit the use of Department of Transportation placards on vehicles

traveling on private roads, as well as on public highways. And finally, proposed changes to the requirements for fire extinguishers that must be carried on a vehicle conform with current National Fire Prevention Association requirements.

(b) The necessity of the amendment to this administrative regulation: The change to a different standard for transporting detonators with other explosives is necessary because the current standard has been supplanted in the industry by a 1993 revision. This amendment in subsection(5)(c) substitutes the current 1993 document for the previous one developed in 1985. The deletion of Class A, B, or C explosives is made because this method of classifying types of explosives is obsolete. The federal agency which tests and classifies explosives no longer uses these designations. Therefore, the amendment refers to a more general way of distinguishing the types of explosives. The change to the type of fire extinguisher required and its maintenance is made in order to comply with up-to-date standards for fire protection. It is also done in recognition that the old standard of a 10 ABC fire extinguisher is not easily available, nor as effective as the extinguishers designated in this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 351.335(1) requires the department to promulgate administrative regulations concerning the transportation of explosive materials. This administrative regulation updates the requirements to match the standards used in the industry and eliminates the outdated requirements.

(d) How the amendment will assist in the effective administration of the statutes: The effects of this amendment will not only make the transportation of explosives safer, it will make the standards more up-to-date and consistent with other state and federal requirements. It also corresponds to what both industry and safety associations consider to be the best safety practices.

(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 800 companies and individuals with permits to possess explosives in the Commonwealth, and the 24 dealers and distributors of explosives, who routinely transport explosives.

(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 require the implementation of the latest industry standards for carrying detonators and explosives, placing placards on their vehicles, and using fire extinguishers.

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

(a) Initially: There will be no additional cost to initially implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funds used to enforce this regulation will come from the general state budget monies appropriated to the Department of Mines and Minerals to accomplish its statutory and regulatory mandates.

(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 need for increased fees or funding 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 establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was used in this administrative regulation to accommodate the use of placards on vehicles that travel on public highways and thereafter enter a job site or mine site. This regulation will ensure that such vehicles retain their compliance with all applicable requirements on both public and private roads.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Explosives and Blasting
(Amendment)

805 KAR 4:125. Firing the blast.

RELATES TO: KRS 351.330, 351.350, 351.990

STATUTORY AUTHORITY: KRS 351.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.335 requires the Department of Mines and Minerals to promulgate rules and administrative regulations concerning the manufacture, transportation, sale, storage, or use of explosives and unassembled components of explosives, and the maintenance of such explosives which have ~~has~~ a direct bearing on safety to life and property. This administrative regulation effects the provisions of that law.

Section 1. Firing the Blast. (1) A code of blasting signals equivalent to Table U-1~~[r]~~ shall be posted at ~~one~~ one (1) or more conspicuous places at the operations, and all employees shall be required to familiarize themselves with the code and conform to it. The blaster shall ensure that this code is communicated clearly to all persons who may enter the danger zone surrounding the blast area. Danger signs shall be placed at suitable locations.

TABLE U-1

WARNING SIGNAL - A one (1) minute series of long blasts five (5) minutes prior to the blast signal.

BLAST SIGNAL - A series of short blasts one (1) minute prior to the detonation ~~shot~~.

ALL CLEAR SIGNAL - A prolonged blast following the inspection of the blast area.

(2) The device used to issue the warning signals shall be loud enough to be heard by all persons in the danger zone around the blast, and shall have a sound distinctive enough to be readily identified. Ordinary truck and automobile horns shall not be used as warning signals.

(3) Before a blast is fired, a loud warning signal shall be given by the blaster in charge, who has made certain that all surplus explosives are in a safe place and all persons ~~employees~~, vehicles, and equipment are at a safe distance, or under sufficient cover.

(4) ~~[(3)]~~ No person shall remain in an area within the danger zone after being requested to leave by the blaster in charge or by a state explosives and blasting inspector.

(5) ~~[(4)]~~ Flagmen shall be safely stationed on highways which pass through the danger zone so as to stop traffic during blasting operations.

(6) ~~[(5)]~~ It shall be the duty of the blaster to fix the time of blasting and to determine the area constituting the danger zone around the blast within which the warning signals shall be audible.

(7) If the department deems it necessary for public safety, it may require the blaster to submit a written plan describing the warning signals, notification procedures, and access control methods to be used on a particular blast site.

(8) ~~[(6)]~~ Before firing an underground blast, warning shall be given, and all possible entries into the blasting area and any entrances to any working place where a drift, raise or other opening is about to hole through, shall be carefully guarded. The blaster shall make sure that all persons ~~employees~~ are out of the blast area before detonating ~~ring~~ a blast.

FRANCIS X. DELZER, Commissioner

EUGENE D. ATTKISSON, Attorney

APPROVED BY AGENCY: May 30, 2002

FILED WITH LRC: June 6, 2002 at 9 a.m.

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attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Larry C. Schneider, Director, Division of Explosives and Blasting, Kentucky Department of Mines and Minerals, PO 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40602, phone (502) 573-0140, fax (502) 573-1099.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry C. Schneider

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the safety procedures to be used prior to detonation of a blast, including the types of warning signals to be used and the method of controlling access to the danger zone around an impending blast.

(b) The necessity of this administrative regulation: KRS 351.335 requires the department to promulgate administrative regulations for the use of explosives to protect the safety of life and property. The need to adequately clear the area around a blast, control access to the area, and use adequate warning signals is imperative to protect the safety of both the public and the affected employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets minimum safety standards for the above-mentioned procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: To administer the statute quoted above, there must be specific standards set and enforced to ensure the safety to persons. This administrative regulation sets out such standards for protecting the lives and safety of persons around a blast site.

(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 to this administrative regulation in Section 1(1) extends the requirement that the warning system be communicated to all persons who may enter the danger zone, rather than only employees of the blasting company. An amendment in subsection (2) specifies that the signal used be loud enough to be heard by all persons in the danger area and that it be of a distinctive character. Automobile and truck horns are prohibited from being used as signaling devices. The amendment to subsection (6) assigns the duty to determine what constitutes the danger zone around the blast to the licensed blaster. And the amendment in subsection (7) permits the department to require a written plan on operations where it deems it necessary for public safety.

(b) The necessity of the amendment to this administrative regulation: Recent accident history indicates that in some cases the signals being used are not adequate. Furthermore, the blaster, who is the person most knowledgeable about the potential hazards of an impending blast, should be the person determining the extent of safety controls that need to be applied. In areas or on jobs where traffic patterns and public access are particularly complex, the department needs to ensure that adequate thought and planning have been given to methods of protecting the public and employees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are all directed toward ensuring the safety of lives and property around a blasting operation as required by KRS 351.335.

(d) How the amendment will assist in the effective administration of the statutes: The amendments being proposed are intended to improve safety around a blasting area by providing better warning signals and specifying that the blaster rather than another less-knowledgeable company representative make decisions on warning signals and access control.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: This proposed administrative regulation will affect the 3000 individuals who are licensed blasters in the Commonwealth, and all persons who live or travel in the vicinity of blasting operations.

(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: Licensed blasters will have to comply with the provisions of this administrative regulation by ensuring that their method of warning people and keeping people away from the danger zone will provide an adequate degree of safety. The persons living and traveling around a blasting operation will be safer and better protected from the effects of a blast.

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

(a) Initially: If the blasting operation must replace its warning signaling system, it could result in an initial cost of several hundred dollars. However, the large majority of companies will not need to replace their warning devices, since they already meet the proposed standards.

(b) On a continuing basis: There will be no additional continuing cost after the first year, or after compliance with this rule is established.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no additional funds required for implementation or enforcement of this administrative regulation. Enforcement costs will be borne as they currently are, with monies budgeted for enforcement by the department.

(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 required by this 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 any fees either directly or indirectly.

(9) TIERING: Is tiering applied? No method of tiering was used in this administrative regulation. However, the blaster was given the responsibility to determine the degree of warning required and the extent of the danger zone, based upon his professional judgment. The amendments proposed recognize that effective warning signals are essential for safety, that there are significant differences between blasting operations, and that the licensed blaster is the person most familiar with the requirements of a specific blast site. This allows a blaster to establish different procedures for different types of jobs, such as blasting in a metropolitan area or blasting in a remote area.

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, 216B.050, [to] 216B.055, 216B.075, 216B.085, 216B.105 to 216B.125 [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 216.2970(1), 216B.042(1), 216B.175(3), 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 [to] coordinates and performs activities which encourage the donation of organs or tissues for transplantation.

(8) "Protective device" means a device 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 dietician" 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. Requirements to Provide Services. A facility shall not be licensed as, or hold itself out to be, or be called, a hospital unless it provides:

- (1) The full range of services required by Section 4 of this administrative regulation; and
- (2) Treatment for a variety of illnesses.

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 law pertaining to its operation.

(b) The governing authority shall:

1. Appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority; and
2. Designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall:

1. Act as the chief executive officer;
2. Be responsible for the management of the hospital; and
3. 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:

1. Periodic reports; and
2. Attendance at meetings of the governing authority.

(c) The administrator shall:

1. Develop an organizational structure including lines of authority, responsibility, and communication; and

2. 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:

1. Hold interdepartmental and departmental meetings, where appropriate;
2. Attend or be represented at the meetings on a regular basis; and

3. Report to each department 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. Administrative reports shall include:

1. Minutes of the governing authority and staff meetings;
2. Financial records and reports;
3. Personnel records;
4. Inspection reports;
5. Incident investigation reports; and
6. Other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. If 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 procedure which assures [assure] that a patient is admitted to the hospital in accordance with medical staff policy;

(c) Any constraint imposed on admissions by a limitation of:

1. Services;
 2. Physical facilities;
 3. Staff coverage; or
 4. Other relevant factor;
- (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) An effective procedure for recording accidents involving a patient, visitor, or staff member, including incidents of transfusion reactions, drug reactions, medication errors, and similar events, and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Report of communicable diseases to the health department in whose jurisdiction the disease occurs, pursuant to the reporting requirements of 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 a patient 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; for example, an identification bracelet imprinted with:

- (a) Name of patient;
 - (b) Hospital identification number;
 - (c) Date of admission; and
 - (d) Name of attending medical staff member.
- (6) Discharge planning.
- (a) The hospital shall have a discharge planning program to assure continuity of care for a patient 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 post-discharge 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 facility able to provide a level of inpatient care not provided by the hospital. A 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 in compliance with this requirement. Transfer procedures and agreements shall:

1. Specify the responsibilities each institution assumes in the transfer of a patient; and

2. Establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If a patient is transferred to another health care facility or to a home health agency:

1. A transfer form containing the following information shall accompany the patient or be sent immediately to the home health agency:

a. Attending medical staff member's instructions for continuing care;

b. Current summary of the patient's medical record;

c. Information as to special supplies or equipment needed for patient care; and

d. Pertinent social information on the patient and family; and

2. A copy of the patient's signed discharge summary shall be forwarded to the health care facility or home health agency within thirty (30) days of the patient's discharge.

(c) If a transfer is to another level of care within the same facility:

1. The history and physical examination report shall be transferred and shall serve to meet the history and physical examination requirement for the licensed level of care to which the patient has been transferred, in accordance with KRS 216B.175(3); and

2. The complete medical record or a current summary of the record shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under by-laws approved by the governing authority. The medical staff shall be responsible to the governing authority 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;

2.a. Define and describe the responsibilities and duties of each category of medical staff, for example, active, associate, or courtesy;

b. Delineate the clinical privileges of staff members and allied health professionals;

c. Establish a procedure for granting and withdrawing staff privileges; and

d. 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 meetings 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. 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; and

7. Establish a policy requiring a member of the medical staff to sign a verbal ~~(telephone)~~ order for diagnostic testing or treatment;

a. As soon as possible after the order was given; or

b. In the event the patient was discharged prior to the order being authenticated, within thirty (30) days of the patient's discharge ~~[within seventy-two (72) hours of the time the order was given].~~

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and other related services and shall have written personnel policies and procedures available to hospital personnel.

(b) There shall be a written job description for each position. Each job description 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 each staff member shall be documented in the employee's personnel record.

a. A skin test shall be initiated on each new staff member 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:

(i) Documents a prior skin test of ten (10) or more millimeters of induration; or

(ii) Is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for a new employee over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless the employee can document that he or she has had a tuberculosis skin test within one (1) year prior to his or her current employment.

d. A staff member who has never had a skin test result of ten (10) or more millimeters induration shall be skin tested annually, on or before the anniversary of the last skin test.

2. A staff member who has a skin test result of ten (10) or more millimeters induration on initial employment or annual testing, shall receive a chest x-ray unless:

a. A chest x-ray within the previous two (2) months showed no evidence of tuberculosis; or

b. The individual can document the previous completion of a course of prophylactic treatment with isoniazid. The employee shall be advised of the symptoms of the disease and instructed to report to his or her employer and to seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. Skin testing dates and results and 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. A staff member whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. 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. A medication shall be administered only upon the written order of a physician or other ordering personnel acting within their statutory scope of practice. If an individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and shall have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease

every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. A staff member who documents completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) The following information shall be included in each employee's personnel record:

1. Name, address, Social Security number;
2. Health records;
3. Evidence of current registration, certification, or licensure;
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. The committee shall:

1. Receive every report of an infection incident discovered by an employee;
2. Develop written infection control policies, consistent with the Centers for Disease Control guidelines.

(d) The policies shall address the:

1. Prevention of disease transmission to and from patients, visitors, and employees, including:
 - 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. Use of environmental cultures; culture testing results shall be recorded and reported to the Infection Control Committee; and
3. 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 accumulations of dirt, rubbish, and foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. A written housekeeping procedure shall be established for the cleaning of each area 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, their nesting places and entrances shall be eliminated.

6. Garbage and trash:

- a. Shall be stored in areas separate from those used for preparation and storage of food;
- b. Shall be removed from the premises regularly; and
- c. Containers shall be cleaned on a regular basis.

(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. A sharp waste container shall be incinerated on or off site, or shall 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. Disposable waste shall be placed in a suitable bag or closed container 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 waste material.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste including a viral or bacterial culture, contaminated swab, or a specimen container or test tube used for microbiologic purposes shall be incinerated, autoclaved, or otherwise rendered nonhazardous; and

b. Pathological waste including a tissue specimen from a surgical or necropsy procedure 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, subject to limitations in subparagraph 5 of this paragraph: blood, blood specimens, used blood tubes, or blood products.

5. Wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 CFR 403, 401 KAR 5:557, and relevant local ordinances.

6. An 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. Linen shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in a clean, dry, dust-free area designated exclusively for this purpose. An uncovered mobile cart may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in a suitable bag or closed container so as to prevent leakage or spillage, and shall be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in an area 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. Medical records shall be retained for at least 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 the 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. Particular 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, if used, shall bear at least the patient's full name, birth date, and medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of a patient whose admission is a result of, or related to, outpatient services.

3. Clinical information pertaining to inpatient and outpatient services shall be centralized in the patient's medical record.

4. A hospital using automated data processing may keep patient indices electronically or reproduced on paper and kept in books.

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(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. A patient's records, or portion thereof, including x-ray film, may be routed 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 results;

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. Nurses' observations and progress notes of a physician, dentist, or other ordering personnel acting within their statutory scope of practice;

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:

a. Autopsy findings, if performed; and

b. 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. Any recognized indexing system may be used.

1. The disease and operative indices shall:

a. Use recognized nomenclature;

b. Include each specific disease diagnosed and each operative procedure performed; and

c. Include 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 protocol for organ procurement for transplant, in consultation with an organ procurement agency, that encourages organ donation and identifies potential organ donors.

(b) If a patient 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 a potential organ donor;

4. Procedures by which the patient's attending physician or designee shall document in the patient's medical record that:

a. If the patient is a potential donor, the organ procurement agency has been notified; or

b. The contraindications to donation.

5. Procedures for the hospital administrator or his designee to report to the Cabinet for Health Services, Office of the Inspector General, information about the possible sale, purchase, or brokering of a transplantable organ, 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, shall not be 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 according to the requirements of 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:

(i) Present illness;

(ii) Past illnesses;

(iii) Surgeries;

(iv) Medications;

(v) Allergies;

(vi) Social history;

(vii) Immunizations;

c. A review of the patient's anatomical systems and level of function at the time of the exam;

d. A patient's vital signs;

e. A general observation of the patient's:

(i) Alertness;

(ii) Debilities; and

(iii) 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.

(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. 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 using standard nursing procedure.

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. A medication shall be administered by a:

- a. Registered nurse;
- b. Physician;
- c. Dentist;
- d. Physician's assistant;
- e. Advanced registered nurse practitioner; ~~or~~
- f. Licensed practical nurse under the supervision of a registered nurse; or
- g. Paramedic acting within his statutory scope of practice.

5. Except in a circumstance that requires a verbal order, a medication, diagnostic test, or treatment shall not be given without a written order signed by a physician, dentist, or other ordering personnel acting within their statutory scope of practice.

a. A verbal [A telephone] order for a medication shall be given only to a licensed practical or registered nurse, paramedic, or a pharmacist and shall be signed by a member of the medical staff or other ordering practitioner:

- (i) As soon as possible after the order was given; or
- (ii) In the event the patient was discharged prior to the order being authenticated, within thirty (30) days of the patient's discharge.

b. A verbal order for a diagnostic test or treatment [~~within seventy-two (72) hours from the time the order is given, by a member of the medical staff or other ordering personnel acting within their statutory scope of practice. A telephone] order may be given to a licensed practitioner acting within his statutory scope of practice [physical, occupational, speech or respiratory therapist in accordance with the therapist's scope of practice] and the hospital's protocols.~~

c. Verbal orders for medications, diagnostic tests and treatments at the time received shall be:

- (i) Immediately transcribed by the person receiving the order;
- (ii) Repeated back to the person requesting the order to ensure accuracy; and
- (iii) Annotated on the patient's medical record, by the person receiving the order, as repeated and verified.

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. If 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. A locking restraint shall not be used under any circumstances.

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 working 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 current written policies and procedures for food storage, handling, and preparation. Written dietary policy and procedure shall be available to dietary personnel.

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 accordance with the medical staff member's orders.

(c) Each meal shall correspond with the posted menu. When a change is necessary, substitution shall provide equal nutritive value and the change shall be recorded on the menu. Each menu shall be kept on file for thirty (30) days.

(d) Every diet, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within 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, the Retail Food Code.

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available 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. 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 services may be provided through arrangement 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 relevant administrative regulations.

b. The original report from a test performed by an outside laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Emergency laboratory services shall be available twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangement, as specified in subparagraph 3a of this paragraph.

b. The conditions, procedures, and availability of a service performed by an outside laboratory 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 a procedure or test 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. A signed report of each laboratory service provided shall be filed with the patient's medical record. A duplicate copy shall be kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. Every request for a laboratory test shall be 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 arrangement 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. Except for exclusions listed in written policies of the medical staff, 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 tissue requiring examination to a pathologist outside the hospital.

5. A signed report of a tissue examination shall be filed promptly with the patient's medical record. A duplicate copy shall be kept in the department.

a. Each report of a macro or microscopic examination performed shall be signed by the pathologist.

b. Examination results shall be filed promptly in the patient's medical record. The medical staff member requesting the examination shall be notified promptly.

c. A duplicate copy of each examination report 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 of 42 USC Part 263a.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or shall 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:

a. Maintain at least a minimum blood supply in the hospital at all times;

b. Be able to obtain blood quickly from community blood banks or institutions; or

c. Have an up-to-date list of donors and equipment necessary to obtain blood from 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 arrangement 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 shall be otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of blood provided to patients in the hospital.

7. A committee of the medical staff, or its equivalent, shall review transfusions of blood or blood derivatives and shall make recommendations concerning policies governing transfusion 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 an adverse reaction. Blood not retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate each transfusion reaction occurring in the hospital and shall make recommendations to the medical staff regarding improvement in transfusion procedure.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distribution of pharmaceuticals in accordance with state and federal law.

1. A hospital that maintains a pharmacy for 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 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. A hospital 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 and directions for the distribution of drugs. The consulting pharmacist 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 shall be correlated with other hospital records where indicated.

1. The pharmacy shall establish and maintain a system of records and bookkeeping in accordance with accounting procedures and policies of the hospital for maintaining adequate control over the requisitioning and dispensing of drugs and drug supplies and for charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of every controlled substance 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:

- a. The discharge of the patient; or
- b. The medication or prescription does not meet requirements for sterility or labeling;

5. Emergency pharmaceutical services; and

- 6. Reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be favorably evaluated in the:

- 1. United States Pharmacopoeia;
- 2. National Formulary;
- 3. United States Homeopath-Pharmacopoeia;
- 4. New drugs; or

5. Accepted dental remedies. Other necessary medication shall be approved for use by the appropriate committee of the medical staff.

(e) [4.] A pharmacist shall be responsible for determining specifications and choosing acceptable sources for drugs, with approval of the appropriate committee of the medical staff.

(f) [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:

1. Diagnostic radiology facilities currently licensed or registered pursuant to the Kentucky Radiation Control Act of 1978 (KRS 211.842 to 211.852);

2. At least one (1) fixed diagnostic x-ray unit capable of general x-ray procedures;

3. A radiologist on at least a consulting basis to:

a. Function as medical director of the department; and

b. Interpret films requiring specialized knowledge for accurate reading;

4. Personnel adequate to supervise and conduct services, including one (1) certified radiation operator who 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. Only a certified radiation operator, under the direction of medical staff members, if necessary shall use any x-ray apparatus or material. Uses include application, administration, and removal of radioactive elements, disintegration products, and radioactive isotopes. A certified radiation operator, under the direction of a physician, may administer medications allowed within their professional scope of practice and the 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) A hospital 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 coordinate restorative services provided to patients in accordance with their needs.

(d) Therapeutic equipment 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) A complete therapy record shall be maintained for each patient provided physical therapy services. The report shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) A [Every] hospital shall have procedures for taking care of an emergency patient with at least a registered nurse on duty ~~to evaluate the patient~~ and a physician on call.

(b) A patient that presents to the hospital requesting emergency services shall be triaged by a registered nurse or paramedic.

(c) The medical staff of a hospital within an organized emergency department of service shall establish and maintain a manual of policy and procedures for emergency and nursing care provided in the emergency room.

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 the patient visits to the emergency room in chronological order, including:

- (i) Patient identification;
- (ii) Means of arrival;
- (iii) Person transporting patient; and
- (iv) 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 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 with organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections, or clinics, 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 departments, social and welfare agencies, and other outpatient departments.

(d) Each service 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 serv-

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ices 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 through:

1. The hospital;
2. A laboratory in another licensed hospital;
3. A laboratory licensed pursuant to KRS 333.030.

(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.

(10) Surgery services.

(a) A hospital 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 surgical cases.

2. If 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 each member 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 procedure 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 the history and workup 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 shall accompany the patient 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 shall be signed by the surgeon.

6. Tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examination.

7. An infection of a clean surgical case shall be recorded and reported to the appropriate committee of the medical staff. The committee shall investigate the matter according to a procedure previously developed by the committee.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) A hospital that provides surgical or obstetrical services shall have anesthesia services available. Anesthesia 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. If 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 at

the direction of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member. The following shall be recorded within forty-eight (48) hours of surgery:

1. Findings of the preanesthetic physical examination;
2. An anesthetic record on a special form; and
3. 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) A hospital providing obstetrical care 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 to 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. A hospital with an obstetrical caseload that 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 if a 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 the patient 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 for an obstetrical emergency.

4. Patients in labor shall be cared for in 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) The hospital shall have a method and procedure for the positive associative identification of the mother and infant. The identifiers shall be placed on mother and newborn 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 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:

1. A delivery occurring outside the delivery room; and
2. A patient with an infectious disease.

(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) A hospital providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nurs-

ing 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. 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. A hospital with a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and shall meet the requirements for psychiatric hospital operations, services, and licensure administrative regulation.

(15) Chemical dependency treatment services. A hospital providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and shall designate location and number of beds to be used for chemical dependency treatment services.

(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. The library collection shall be organized and available to the medical and nursing staff members at all times.

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:

1. This administrative regulation; and

2. 42 CFR Section 412.22 ~~[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) ~~[Medical services shall be provided by hospital employees or under contract or other written agreement with an entity not associated with:~~

~~1. The host hospital; or~~

~~2. A third party that controls both the hospital and the long-term acute care area.~~

(c) ~~Food, dietetic, housekeeping, maintenance and other services necessary to maintain cleanliness and safety may be obtained:~~

~~1. Under a contract or other written agreement with:~~

~~a. The host hospital; or~~

~~b. A third party that controls both the hospital and the long-term acute care area; or~~

~~2. As otherwise provided by federal law.~~

(d) A hospital wishing to provide long-term acute inpatient hospital services may request authorization from the ~~[Division of Licensure and Regulation]~~ Office of Inspector General, Cabinet for Health Services. The Office of Inspector General ~~[Division of Licensure and Regulation]~~ shall conduct a survey to determine if 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 the same services.

PAMELA J. MURPHY, Inspector General

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: June 14, 2002

FILED WITH LRC: June 14, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 2002, 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 July 15, 2002, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 5W-C, Frankfort, Kentucky 40621, phone (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 measures 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 regulate all types of nonwritten orders for medications, medical tests and treatments by changing the reference from telephone to verbal orders. The regulation will add a requirement that verbal orders shall be repeated and verified on patient records. The regulation will allow paramedics to administer medications pursuant to their scope of practice. The regulation will also be amended require long term acute care hospitals to comply with federal certification requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide protection for Kentucky hospital patients to prevent medical errors that result from miscommunication.

(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 measures to meet patient need and provide for patient safety.

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(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 this administrative regulation will be provided an enhanced tool to ensure that verbal orders for medications, medical tests and treatments are communicated correctly. Patient safety will be enhanced. Allowing paramedics to administer medications will allow flexibility in hospital staffing.

(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.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 14, 2002

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(New Administrative Regulation)

11 KAR 15:080. High school reporting.

RELATES TO: KRS 164.7885(4)

STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the deadline for high schools to report changes in KEES data to the authority.

Section 1. The high school shall submit additions, changes, or corrections to a student's high school grade point average or ACT score to the authority not later than six (6) months after an eligible high school student graduates. The authority shall not accept any additions, changes, or corrections to a student's high school grade point average or ACT score submitted by the high school after that date and the student's eligibility shall be determined based on that information as of that date.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: April 30, 2002

FILED WITH LRC: June 13, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 22, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 15, 2002, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (502) 696-7290, Fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of the above-cited administrative regulation will require that all high schools submit additions, changes, or corrections in an eligible high school student's grade point average or ACT score to the authority no later than 6 months after a student graduates.

(b) The necessity of this administrative regulation: Absent this administrative regulation, high schools have reported changes in grades long after the students have embarked on postsecondary programs of study; and the changes may effect, either by increasing or reducing, the amount that students may receive toward college costs. This poses an untenable administrative burden on the authority and colleges as well as uncertainties for the students.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. KRS

164.7885 requires high schools to report grade point averages and ACT scores to the authority by June 30 each year. This administrative regulation establishes a deadline for changing that information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 164.7885 requires high schools to report grade point averages and ACT scores to the authority by June 30 each year. This administrative regulation establishes a deadline for changing that information. Absent this administrative regulation, high schools have reported changes in grades long after the students have embarked on postsecondary programs of study; and the changes may effect, either by increasing or reducing, the amount that students may receive toward college costs. This poses an untenable administrative burden on the authority and colleges as well as uncertainties for the students.

(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 statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: More than 380 public and private Kentucky high schools are eligible to participate, and approximately 191,000 high school students are potentially eligible for scholarships.

(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: High schools have reported changes in grades long after the students have embarked on their postsecondary programs of study; and the changes may effect, either by increasing or reducing, the amount that students may receive toward college costs. This administrative regulation establishes a deadline for changing that information.

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

(a) Initially: There will be no significant direct or indirect costs or savings.

(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 funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private, credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Kentucky educational excellence scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Kentucky educational excellence scholarship trust 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: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(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? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, 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.

**PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(New Administrative Regulation)**

807 KAR 5:095. Fire protection service for water utilities.

RELATES TO: KRS 278.030, 278.040, 278.160, 278.170, 278.230, 278.280

STATUTORY AUTHORITY: KRS 278.012, 278.015, 278.030, 278.040, 278.160, 278.170, 278.230, 278.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate, pursuant to KRS Chapter 13A, reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) grants the commission exclusive jurisdiction over utility rates and services. KRS 278.012 states that water associations are subject to the commission's jurisdiction. KRS 278.015 expressly subjects water districts to commission jurisdiction. KRS 278.030 authorizes utilities to collect fair, just, and reasonable rates for their services. KRS 278.170(3) provides that a utility may provide free or reduced rate water service to any city, county, urban-county, fire protection district or volunteer fire protection district for fighting fires or training fire-fighters under a tariff that is approved by the commission and that requires the water user to provide water usage reports to the utility on a regular basis. KRS 278.280 authorizes the commission to prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility. This administrative regulation governs a utility's provision of water for fire protection service.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Private fire protection service" means water service to support the operation of a private fire protection system, including private hydrants, automatic fire sprinkler systems, standpipes, and other appurtenances that a customer installs to assist in extinguishing fires.

(2) "Private fire service line" means a water line that is installed at the customer's expense and that extends from a water main to provide private fire protection service to a single customer, a single multi-unit building or complex, or a single commercial or industrial development.

Section 2. A utility may enter into a special contract with a customer regarding the allocation of costs for system improvements necessary for private fire protection service.

Section 3. A utility shall require a customer requesting private fire protection service to bear the cost of constructing a private fire service line that runs from the water utility's distribution or transmission main to the customer's property. The utility shall own and be responsible for the maintenance, repair, and replacement of the portion of a private fire service line that extends from the utility's distribution or transmission main to the utility's easement. The customer shall own and be responsible for the maintenance, repair, and replacement of the remaining portion of the line.

Section 4. A utility shall permit a customer to connect a private fire protection system to a service line that serves the customer for other purposes, including domestic consumption, if:

(1) The connection to the service line for the fire suppression system is beyond the customer's metering point; and

(2) There is a separate shutoff valve subject to the utility's control.

Section 5. Rates for Private Fire Protection Services. (1) A utility shall not assess a rate for private fire protection service that includes a component for water usage unless that component is based upon a customer's actual usage.

(2) A utility shall not assess a separate charge or fee for private fire protection service if the customer's private fire protection system is directly connected to a service line that serves the customer for other purposes.

(3) A utility shall assess a rate for service to a fire protection system that is separately connected to utility's distribution system and that does not receive water service for any other purpose. This rate shall recover, at a minimum, the cost of:

(a) Depreciation and debt service or return on utility investment in the utility facilities that directly connect the utility's main to the fire protection system;

(b) Expenses associated with periodic inspections to ensure against unauthorized use;

(c) Expenses associated with meter reading and billing, if a meter is installed for the fire protection system; and

(d) Expenses for maintenance, repairs, and inspection on the utility facilities that directly connect the utility's main to the fire protection system.

Section 6. A utility shall require a customer who receives private fire service through an unmetered connection to report:

(1) At least annually, his reasonable estimate of water usage for flushing, testing, or other purposes and the basis for his estimate; and

(2) Within one (1) month after the service's use to fight a fire, his estimate of the water usage to fight the fire and the basis for his estimate.

Section 7. As a condition of service, a utility may require a customer who connects a private fire protection system to the utility's facilities, either directly or indirectly, to install double-acting backflow preventers.

Section 8. Fire Sprinkler Systems. (1) A utility shall provide service dedicated solely to a fire sprinkler system without the use of metering equipment unless an alternative method is impractical. If an alternative method is impractical, a utility may require a metered service for a fire sprinkler system and assess a fee for the cost of its installation that includes the cost for service tap, meter, and meter vault.

(2) A utility may require a customer who connects a fire sprinkler system to his water distribution system to conduct periodic maintenance, tests, or inspections upon his fire sprinkler system to ensure that the fire sprinkler system does not adversely affect the water quality or performance of the utility's system.

(3) A utility may require a customer who connects a fire sprinkler system to its water distribution system to report:

(a) The location of the fire sprinkler system;

(b) A change in the fire sprinkler system's operating status;

(c) The performance of required maintenance on the fire sprinkler system; and

(d) The results of any required test or inspection of the fire sprinkler system.

(4) A utility providing service that complies with 807 KAR 5:066, Section 5(1), shall not be required to increase water pressure levels to support fire sprinkler systems unless the commission finds an increase is reasonable and necessary.

Section 9. A utility that permits a fire department to withdraw water from its water distribution system for fire protection and training purposes at no charge or at reduced rates shall:

(1) Require a fire department to submit quarterly reports demonstrating its water usage for the quarter; and

(2) State in tariff the penalty to be assessed for failure to submit the reports required by subsection (1) of this section.

Section 10. Deviation. For good cause shown, the commission may permit a deviation from this administrative regulation.

MARTIN J. HUELSMANN, Chairman

JANIE A. MILLER, Secretary

APPROVED BY AGENCY: May 21, 2002

FILED WITH LRC: May 22, 2002 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 23, 2002, at 9:30 a.m., Eastern Daylight Time, at the Public Service Commission's office, 211 Sower Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Gerald E. Wuetcher, Assistant General Counsel, Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (502) 564-7279.

REGULATORY IMPACT ANALYSIS

Contact Person: Gerald E. Wuetcher, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes rules for the assessment of charges for private fire protection services and the conditions that a water utility may impose, authorizes the assessment of system development charges by municipal and public water utilities, and specifies the requirements for applying to the Public Service Commission for authority to assess these charges. It further establishes rules for administering these charges and reporting on their collection and the use of the proceeds.

(b) The necessity of this administrative regulation: This proposed regulation will assist the Public Service Commission in enforcing the statutes, and is necessary to the Public Service Commission's authority to regulate utilities and enforce KRS Chapter 278.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just, and reasonable rates for services. This regulation defines the circumstances when a water utility may impose a separate charge for private fire protection services and the cost components that should be recovered through a separate charge. KRS 278.170(3) permits utilities to provide free or reduced-rate water service to fire departments for fire protection and training purposes. This regulation establishes uniform reporting requirements for fire departments that make use of that service. KRS 278.280 provides that the Public Service Commission may prescribe rules for the performance of any service or the furnishing of any commodity. This regulation establishes the conditions under which a water utility is required to provide private fire protection services and the conditions that a water utility may impose upon a customer seeking fire protection service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the conditions under which a water utility may assess a charge for private fire protection service and the requirements that a water utility may impose to provide that service. It specifies the cost components that must be recovered in any charge for private fire protection service. This regulation provides clear rules on the rates and conditions of service associated with private fire protection service and, therefore, will ensure fair and equitable treatment of all utility customers.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 121 water districts, 22 water associations, and 16 investor-owned water utilities and their customers.

(3) 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 of implementing this administrative regulation is limited. It will

establish rules for the assessment of rates for fire protection services and the imposition of conditions for receiving that service. The proposed rules generally reflect practices that water utilities are currently following.

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

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(6) 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.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(8) TIERING: Is tiering applied? Tiering is not used in this proposed regulation. The conditions that give rise to the provision of fire protection services are not unique to any particular type or size of utility. Tiering is therefore inappropriate.

**PUBLIC PROTECTION AND REGULATION CABINET
Mine Safety Review Commission
(New Administrative Regulation)**

825 KAR 1:030. Penalties for subsequent violations; criteria for modification of civil penalties and fines.

RELATES TO: KRS 351.025(1), (2), 351.194(6)

STATUTORY AUTHORITY: KRS 351.025(1)(a), (c), 351.194(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.025(1)(a) requires the Mine Safety Review Commission to establish a maximum penalty for certified miners who commit subsequent offenses. KRS 351.025(1)(c) requires the Mine Safety Review Commission to establish a maximum penalty for noncertified personnel who commit subsequent offenses. KRS 351.194(6) authorizes the Mine Safety Review Commission to establish criteria that may be used to modify the civil penalties promulgated by the Kentucky Department of Mines and Minerals. This administrative regulation establishes the maximum penalties for certified and noncertified personnel who commit subsequent offenses. In addition, this administrative regulation establishes the criteria the commissioners may use to modify the penalties set forth in 805 KAR 8:030, 805 KAR 8:040, 805 KAR 8:050, and 805 KAR 8:060.

Section 1. Definitions. (1) "Certified miner" means a miner, foreman, electrician, shot firer, or any other person who has procured a certificate from the Kentucky Department of Mines and Minerals to perform particular work duties in and around a coal mine; synonymous with the term "certified personnel".

(2) "Intentional" means, with respect to conduct or to a result, that a person's conscious objective is to engage in that conduct or cause that result.

(3) "Noncertified personnel" means any person who has not procured a certificate from the Kentucky Department of Mines and Minerals to perform particular work duties in and around a coal mine.

(4) "Subsequent offense" means any intentional violation of, or order to violate a mine safety law, which places a miner in imminent danger of serious injury or death, as adjudicated by the Kentucky Mine Safety Review Commission, and which occurs after the individual's or entity's first offense.

Section 2. Certified Miners. The maximum penalty to be imposed upon a certified miner for subsequent offenses shall be revocation.

Section 3. Noncertified Personnel. The maximum penalty to be imposed upon noncertified personnel for subsequent offenses shall be a civil monetary fine against said noncertified person equivalent to the value of the wages received by that person, not to exceed

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sixty (60) working days.

Section 4. Modification of Civil Penalties and Fines. The maximum penalty for offenses established by 805 KAR 8:030, 805 KAR 8:040, 805 KAR 8:050, and 805 KAR 8:060, may be modified on a case-by-case basis using the following criteria:

- (1) Cooperation with investigators;
- (2) The severity of the harm done:
 - (a) Death;
 - (b) Serious physical injury; or
 - (c) Placed in imminent harm;
- (3) Acceptance of responsibility for actions;
- (4) History of violations;
- (5) Adjudication in other states;
- (6) Mitigating circumstances; and
- (7) Aggravating circumstances.

BAYARD V. COLLIER, Chair

APPROVED BY AGENCY: June 13, 2002

FILED WITH LRC: June 14, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 25, 2002, at 10 a.m. (EST) at the offices of the Mine Safety Review Commission, 132 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by 4:30 p.m. (EST), July 18, 2002, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Diane Schuler Fleming, General Counsel, Mine Safety Review Commission, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-0316, fax (502) 573-6625.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diane Schuler Fleming

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum penalties for certified and non-certified personnel who commit subsequent offenses. In addition, this administrative regulation establishes the criteria the commissioners may use to modify the penalties set forth in 805 KAR 8:030, 8:040, 8:050, and 8:060.

(b) The necessity of this administrative regulation: KRS 351.025(1)(a) requires the commission to establish a maximum penalty for certified miners who commit subsequent offenses. KRS 351.025(1)(c) requires the Mine Safety Review Commission to establish a maximum penalty for noncertified personnel who commit subsequent offenses. KRS 351.194(6) authorizes the commission to establish criteria that may be used to modify penalties or fines set forth under Title 805 KAR. Specifically, it addresses the penalty regulations being promulgated by the Kentucky Department of Mines and Minerals - 805 KAR 8:030, 8:040, 8:050, and 8:060. This administrative regulation establishes the maximum penalties and criteria to be used by the commissioners when considering modification of those penalties. As a result, a person or entity charged with a violation of the mine safety laws in the Commonwealth of Kentucky will now have a clearer idea of the range of penalties which may be imposed if they are found guilty.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the maximum penalties that may be imposed for subsequent offenses as prescribed by the legislature in the aforementioned statutes. In addition, this administrative regulation sets forth the criteria the commissioners may utilize to modify the penalties established by the Mining Board for first time offenses.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation deline-

ates the maximum penalties for subsequent offenses as well as the criteria for modifying penalties for first time offenses, thus putting the public on notice of the procedures to be followed and increasing efficiency and understanding of the administrative process.

(2) New administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Owners of mines, supervisors, foremen, miners and all other employees engaged in coal mining in Kentucky. The number is approximately 16,000. Unions and owner organizations will also be affected.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This administrative regulation will assist the aforementioned groups by providing detailed information on the penalty process. It is hoped that the provision of this information will aid the public in being better informed concerning the range of penalties which may be imposed for violation of Kentucky's mine safety laws.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: None anticipated.

(6) The source of funding for the implementation and enforcement of this administrative regulation: General commission funds.

(7) Assessment of whether an increase in funding will be necessary to implement this administrative regulation: The commission does not anticipate the need to increase funding to implement this administrative regulation.

(8) This administrative regulation does not establish fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Tiering is applied in this administrative regulation as a distinction is made between certified and noncertified personnel.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 11, 2002

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 11, 2002 at 10:00 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 May 14, 2002 meeting were approved.

Present were:

Members: Representative John Arnold, Chairman; Senators Marshall Long; Joey Pendleton, Richard Roeding; Representatives Woody Allen, James Bruce and Jimmie Lee.

LRC Staff: Dave Nicholas, Karen Smith, Sarah Amburgey, Donna Little, Edna Lowery, Susan Wunderlich, Donna Kemper, and Ellen Steinberg.

Guests: Michael A. Mone, Board of Pharmacy; Ellen Benzing, Jonathan Gassett, Scott Porter, Department of Fish and Wildlife; Mark Farrow, Edward S. Ford III, Don L. Notter, DVM, Ann Stewart, Department of Agriculture; Jack Damron, Brenda Priestley, Department of Corrections; Lois Adams-Rodgers, Department of Education; Carla H. Montgomery, Department of Workers' Claims; Jay Thompson, Glenn Jennings, Char Hummel, Malinda S. Pressor, Department of Insurance; Simeon Parker, Terry M. Slade, Janet M. Hall, Department of Housing, Buildings and Construction; Sam Burnett, Ken Spach, Vera Frazer, Sharon Eli Mercer, Jim Carreers, Cabinet for Health Services; Nancy Smith Alexander, Marla Aldridge, B.J. Jacobs, Karen Doyle, Rosanne Barkley, Shirley Eldridge, Stephanie Brammer-Barnes, Joyce Lea, Cabinet for Families and Children; Kathy A. Mefford, Three Rivers District Health Department; Karen Cooper, Kentucky River District Health Department; Shawn D. Crabtree, Lake Cumberland District Health Department; David Cammack, Jessamine County Health Department; Renee Blair, Lloyd W. Peniston, North Central District Health Department; Deborah Acker, local health departments; James Ratliff, Kentucky Health Department Association; Ned Fitzgibbons, Bullitt County Health Department; Bart Baldwin, Children's Alliance.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Board of Pharmacy

201 KAR 2:105. Licensing and drug distribution requirements for drug manufacturers and wholesalers. Michael Mone represented the Board.

In response to questions by Senator Roeding, Mr. Mone stated that this administrative regulation's drug manufacturer requirements did not apply to pharmacists compounding drugs based upon a received prescription or regular prescribing patterns. In those contexts, federal regulation exempted pharmacists from being considered manufacturers. However, the requirements did apply to pharmacists compounding drugs to sell to another pharmacy. Additionally, public health clinics were authorized under Section 3(3) of this administrative regulation to purchase federal legend drugs from licensed manufacturers and wholesalers because of their affiliation with licensed pharmacists.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation; and (3) Sections 1 to 8 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:015. Boats and motor restrictions. Scott Porter, General Counsel, Ellen Benzing, Counsel, and Jonathan Gassett, Division Director, represented the Department.

This administrative regulation was amended as follows: Sections 1, 3, 4, and 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Department Of Agriculture: Livestock Sanitation

302 KAR 20:110 & E. Treatment of imported mares. Mark Farrow, General Counsel, Dr. Don Notter, State Veterinarian, and Edward S. Ford III represented the Department.

This administrative regulation was amended as follows: Sections 1, 2, 4, and 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

302 KAR 20:140 & E. Breeding shed for female equines. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 4 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) Sections 2 and 3 were amended to specify that the testing requirements must be satisfied before the mares may be bred in Kentucky.

302 KAR 20:220. Pseudorabies: eradication and control. In response to questions by Senator Roeding, Dr. Notter stated that this administrative regulation was amended to eliminate swine slaughter feed lots because there were no active lots currently and because of their high risk of disease. The pork industry also favored their elimination.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 4, and 6 were amended to specify statutory citations; and (2) Sections 1, 3, 5, and 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack Damron, Counsel, represented the Department.

This administrative regulation was amended as follows: (1) Section 1(1) was amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) CPP 5.1 was amended to: (a) insert a reference to 45 CFR 46, the federal regulation governing human studies; (b) require the consent form to include an explanation to the inmate of the goals and expectations of the research project; and (c) clarify in the consent form that the inmate was releasing the Department from liability for any personal injuries to the inmate resulting from the research project.

Education, Arts, And Humanities Cabinet: Kentucky Board of Education: Department of Education: Office of District Support Services: General Administration

702 KAR 1:035. Group health and life insurance. Lois Adams-Rodgers, Deputy Commissioner, Keena Cole, Associate Commissioner, and Debbie Hendrick, Liaison, represented the Board.

In response to a question from Senator Roeding, Ms. Cole stated that blended employees were part-time certified teachers who also worked part-time in noncertified positions. Their combined hours rendered them eligible for health insurance.

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 Chapter 13A.

School Administration and Finance

702 KAR 3:300. Approval for school district lease and retirement incentive annuity agreements. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 and 3 were amended to comply with the drafting requirements of KRS Chapter 13A.

School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. In response to questions by Representative

Bruce, Ms. Adams-Rodgers stated that by statute, the Board was required to designate an agent to manage high school athletics in Kentucky and so designated the Kentucky High School Athletic Association in this administrative regulation. The Board amended this administrative regulation to update the material incorporated by reference, the KHSAA Handbook. The updated handbook authorized schools to utilize a level two coach if they could not find a level one coach, a coach who also served as a full-time certified faculty member. Qualified level two coaches ranged from those with 64 hours of college credits to high school graduates who were in compliance with local district standards.

In response to questions by Chairman Arnold, Ms. Adams-Rodgers stated that the Handbook's rules regarding leveled coaches did not apply to assistant coaches.

This administrative regulation was amended as follows: (1) Sections 2, 3, and 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) the KHSAA Handbook was amended to clarify requirements and deadlines.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:021. Individual self-insurers. Carla Montgomery 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); and (3) Sections 1, 3, 9, 13, and 14 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

803 KAR 25:026. Group self-insurers. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 3, 4, 6, 7, 8, 10, and 12 were amended to comply with the drafting and format requirements of KRS Chapter 13A and the group self-insurer requirements of KRS 342.350(4).

Public Protection And Regulation Cabinet: Department of Insurance: Health Insurance Contracts

806 KAR 17:081. Minimum standards for long-term care insurance policies. Char Hummel, Counsel, Glenn Jennings, Deputy Commissioner, and Jay Thompson, Branch Manager, represented the Department.

In response to a question by Senator Roeding, Mr. Jennings stated that this administrative regulation was amended to unify Kentucky's long-term care insurance requirements with the requirements of most other states. The uniformity enabled long-term care insurance policies to be issued in Kentucky without any greater difficulty or expense.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1 to 20, 22 to 27, and 29 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (2) Section 18 was amended to delete the provision authorizing the commissioner to exempt insurers from statutory reporting requirements.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:120 & E. Kentucky Building Code/2002. Terry Slade, Acting Director, Janet Hall, General Counsel, and Simeon Parker, Assistant Director, represented the Department.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 to 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

815 KAR 7:125 & E. Kentucky Residential Code/2002. This administrative regulation was amended as follows: (1) the NECES-

SITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Cabinet For Health Services: Department for Medicaid Services: Services

907 KAR 1:340. Reimbursement for hospice services. Sharon Mercer, Director, and Vera Frazer, Assistant Director, represented the Department.

In response to questions by Senator Roeding, Ms. Mercer stated that the Department amended this administrative regulation to include their reimbursement methodology for hospice services, which had previously been in their policy and procedure manual. Pursuant to a federal mandate, the methodology established four levels of reimbursement which corresponded with the four levels of hospice care, with a lifetime reimbursement cap of \$16,650.85.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 5, and 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Cabinet For Families And Children: Department of Community Based Services: Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Joyce Lea and Karen Doyle represented the Department.

In response to questions by Senator Roeding, Ms. Doyle stated that the 2002 Supplemental Security Income cost of living increase was a federal requirement which was funded with Kentucky general fund dollars.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to include specific authorizing language; (2) Section 1(2) was amended to cite to a definition in KRS 194B.005; and (3) Sections 2, 3, 6, and 13 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Protection and Permanency: Child Welfare

922 KAR 1:320. Service appeals. Stephanie Brammer-Barnes and Karen Doyle 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 more fully state the necessity for the administrative regulation; and (3) Sections 1 to 9 were amended to comply with drafting requirements of KRS Chapter 13A.

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:049. Small game and furbearer hunting on public areas. Scott Porter, General Counsel, Ellen Benzing, Counsel, and Jonathan Gassett, Division Director, represented the Department.

In response to questions from Representative Allen, Mr. Mone stated that this administrative regulation was amended to establish a quota for fox hunting field trials to prevent excessive eradication of the fox population. If a regulation contained a dog-leashing requirement for hunts, the dogs could be unleashed once the hunts had begun.

301 KAR 2:140 & E. Requirements for wild turkey hunting. In response to questions from Senator Roeding, Mr. Porter stated that the amendments to this administrative regulation lightened and simplified the reporting requirements for wild turkey hunters.

301 KAR 2:142 & E. Spring wild turkey hunting.

301 KAR 2:172. Deer hunting seasons and requirements. In response to questions from Senator Roeding, Mr. Porter stated that while the amendments to this administrative regulation lightened and simplified the written reporting requirements for deer hunters, they did not alter the existing deer checking requirements.

301 KAR 2:174. Deer hunting zones.

301 KAR 2:176. Deer control tags. In response to a question by Senator Roeding, Mr. Gassett stated that if an antlered deer was taken under a destruction permit, the amendments to this administrative regulation required the antlers to be turned into the Department. The Department instituted the new requirement to discourage hunters seeking additional antler trophies from applying for destruction permits.

301 KAR 2:179. State park deer hunts. In response to a question from Senator Roeding, Mr. Mone stated that this administrative regulation was amended to reduce the application fee for the pheasant quota hunts to \$3 and to increase the hunting fee to \$25 to ensure that those chosen to participate in the hunts bore the hunt costs, rather than the unsuccessful applicants.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary. Jack Damron, Counsel, represented the Department.

In response to a question by Representative Lee, Mr. Damron stated that Corrections administrators could not internally amend the policies and procedures incorporated by reference in this administrative regulation. The policies could be amended only through the administrative regulation amendment process established by KRS Chapter 13A.

501 KAR 6:050. Luther Lockett Correctional Complex.

501 KAR 6:080. Department of Corrections manual.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020. Parts or materials list. Terry Slade, Janet Hall, General Counsel, and Simeon Parker represented the Department.

The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

Department Of Law: Office of the Attorney General: Racial Profiling

40 KAR 7:010. Procedures for reporting allegations of racial profiling.

Revenue Cabinet: General Administration

103 KAR 1:050. Forms manual.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:075. Wildlife rehabilitation permits.

Hunting and Fishing

301 KAR 3:022. License, tax and permit fees.

Water Patrol

301 KAR 6:040E. Zoning or marking of waterways.

Department Of Agriculture: Livestock Sanitation

302 KAR 20:010. Definitions. Mark Farrow, General Counsel, Dr. Don Nottter, State Veterinarian, and Edward S. Ford III, Equine Program, represented the Department.

Senator Roeding made a motion to defer consideration of this administrative regulation. Without objection, and with the agreement of the agency, this administrative regulation was deferred.

302 KAR 20:100. Garbage. In response to questions by Representative Allen, Dr. Nottter stated that this administrative regulation was amended to eliminate the feeding of garbage to swine to prevent the transmission of disease. The amendments prohibited the feeding of personal garbage, including table scraps, and also prohibited the feeding of garbage collected from institutions such as restaurants or hospitals. They did not prohibit the feeding of unprocessed farm produce to swine because it was not included in the definition of garbage. The Department amended this regulation to prohibit the feeding of all garbage to swine, even if it was treated, because it had been too difficult for the Department to monitor and enforce compliance with the garbage treatment requirements. Violations of this administrative regulation could result in fines.

In response to questions by Senator Roeding, Mr. Farrow stated that the amendments to this administrative regulation did not prevent the feeding of any manufactured feed products to swine, such as feed made from the byproducts of feathered domestic animals.

Chairman Arnold stated that he was concerned that as amended, this administrative regulation prohibited a person raising swine for his own use from feeding them his personal leftovers. He suggested that the scope of the administrative regulation be narrowed to apply only to those raising swine for commercial purposes.

Senator Roeding stated that the prior version of the regulation did not apply to table scraps because they were excluded from the definition of garbage.

Mr. Farrow stated that the Department wanted to defer the Subcommittee's consideration of this administrative regulation so the Department could reconsider the scope of its application. Without objection, this administrative regulation was deferred.

Justice Cabinet: Department of Criminal Justice Training: Kentucky Law Enforcement Council

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

Public Protection And Regulation Cabinet: Department of Mines and Minerals: Sanctions and Penalties

805 KAR 8:010. Definitions for 805 KAR Chapter 8.

805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.

805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.

805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.

805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

Kentucky Racing Commission: Harness Racing

811 KAR 1:105. Review and appeal.

Cabinet For Health Services: Department for Public Health: Communicable Diseases

902 KAR 2:151. Repeal of 902 KAR 2:150 and 902 KAR 2:160.

902 KAR 2:180. Human immunodeficiency virus/acquired immunodeficiency disease syndrome (HIV/AIDS) education approval requirements.

Sanitation

902 KAR 10:085. Kentucky on-site sewage disposal systems. Sam Burnett, Dr. Rice Leach, Public Health Commissioner, and Ken Spach represented the Department. Ned Fitzgibbons appeared in opposition to this administrative regulation.

In response to questions by Senator Pendleton, Mr. Burnett stated that this administrative regulation was amended to permit only the use of synthetic filter fabric, rather than straw, as a barrier for lateral lines for low pressure pipe systems due to concerns regarding the straw's faster rate of decomposition.

In response to questions by Representative Allen, Mr. Burnett stated that as amended, this administrative regulation permitted sites previously classified as unsuitable for on-site sewage disposal systems, such as sites with compacted soil, to be upgraded and classified as suitable. Once a site was upgraded, the system could be installed without any further waiting period.

In response to questions by Senator Roeding, Dr. Leach stated that, due to concerns regarding soil sufficiency in the alternate sites, this administrative regulation was amended to prohibit the installation of sewage disposal systems in areas different than the designated installation areas even if the local health department approved the new sites.

Mr. Fitzgibbons stated that he was representing the Health Care Advisory Council and the Council was opposed to certain provisions in this administrative regulation. The Council was concerned that the Department did not minimally define usable land space for an on-site system, yet permitted a new site to use only fifty percent of the required minimal lateral footage for a system and then discharge into a holding tank. Additionally, the Council was concerned that a leaking lagoon was considered improper but a seepage pit was considered proper. Lastly, the Council questioned why the adminis-

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trative regulation failed to address monitoring standards for the Department's permit agents and mandatory maintenance and operation requirements.

Dr. Leach stated that the Department generally made those decisions to provide some flexibility in the administrative regulation's application. However, given the questions and concerns regarding the amendments to this administrative regulation, the Department requested that the Subcommittee defer its consideration of this administrative regulation so the Department could reassess the appropriateness of some of the amendments. Without objection, this administrative regulation was deferred.

State Health Plan

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

Health Services and Facilities

902 KAR 20:016E. Hospitals; operations and services.

Department for Medicaid Services: Services

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

907 KAR 1:018E. Reimbursement for drugs.

907 KAR 1:030E. Home health agency services.

907 KAR 1:031E. Payments for home health services.

907 KAR 1:081E. Repeal of 907 KAR 1:080.

907 KAR 1:170E. Payments for home and community based waiver services.

907 KAR 1:320E. Kentucky Patient Access and Care System (KenPAC).

907 KAR 1:720E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency.

Cabinet For Families And Children: Department of Community Based Services: Protection and Permanency: Child Welfare

922 KAR 1:460. Standards for youth wilderness camps.

Other Business:

Cabinet For Health Services: Department for Public Health: Local Health Departments

902 KAR 8:170. Local health department financial management requirements. Dr. Rice Leach, Public Health Commissioner, represented the Department. Kathy Mefford, Director, Three Rivers District Health Department, and prior Chairperson, Kentucky Health Department Association Regulations Committee, and James Ratliff, President, Kentucky Health Department Association, appeared in response to this administrative regulation.

Subcommittee staff stated that this administrative regulation established minimum fiscal and financial management requirements for Kentucky's county and district public health departments and for all other classes of local health departments. The Subcommittee had reviewed this administrative regulation in November, 2001 and had questioned how it impacted the use of sliding scales for fees by local health departments. During that review, the Department had informed the Subcommittee that the use of sliding fee scales were optional. However, recently the Department had issued a memorandum to local health departments indicating that this administrative regulation required the use of sliding fee scales. The Subcommittee had requested that the Department attend the current Subcommittee meeting to address this apparent conflict and possible remedies.

Dr. Leach stated that he had represented the Department and this administrative regulation at the November, 2001 Subcommittee meeting. At that time, he had unintentionally misinformed the Subcommittee about the sliding fee scale issue. He had intended that the use of sliding fee scales would be optional for local health departments, and had believed that the administrative regulation had implemented that intent. He had remained under that misunderstanding when he had issued the memorandum indicating that the administrative regulation would be enforced as promulgated. However, he subsequently had ascertained that the administrative regulation instead mandated the use of sliding fee scales. To rectify this conflict, he suggested that the Department issue an emergency regulation addressing this issue. The Department expected to initiate that process after they had consulted with the Inspector General's Office regarding Medicaid compliance. While the Department wanted to provide local health departments flexibility in establishing their fee structures, they wanted to ensure that doing so would not

run afoul of Medicaid billing regulations.

Ms. Mefford stated that the Kentucky Health Department Association Regulations Committee was willing to work with Dr. Leach and the Department to resolve this issue. They had agreed to the administrative regulation in the fall because they understood it allowed each health department to decide locally whether their needs were best served by retaining a nominal fee structure or by instituting a sliding fee scale. Any emergency regulation addressing this issue should continue to authorize the use of nominal fees and should be in compliance with Medicaid billing requirements. The emergency regulation also should be issued before July 15, 2002 because the fee structure conflict needed to be resolved before 922 KAR 8:170 became effective.

James Ratliff stated that he requested the Department to issue an immediate emergency regulation authorizing local health departments to continue their current billing structures while the Department waited for the Inspector General's opinion on Medicaid compliance.

The Subcommittee adjourned at 11:50 a.m. until July 9, 2002, at 10 a.m. in Room 149 of the Capitol Annex.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates A - 2

The Locator Index lists all administrative regulations published in VOLUME 29 of the Administrative Register from July, 2002 through June, 2003. 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 28 are those administrative regulations that were originally published in Volume 28 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2002 bound Volumes were published.

KRS Index A - 6

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 29 of the Administrative Register.

Subject Index A - 8

The Subject Index is a general index of administrative regulations published in VOLUME 29 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	28 Ky.R. Page No.	Effective Date	Regulation Number	28 Ky.R. Page No.	Effective Date
VOLUME 28					
The administrative regulations listed under VOLUME 28 are those administrative regulations that were originally published in Volume 28 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2002 bound Volumes were published.					
EMERGENCY ADMINISTRATIVE REGULATIONS:			101 KAR 1:325		
(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)			Amended	2242	6-14-2002
			102 KAR 1:260	2751	
			102 KAR 1:270	2751	
			103 KAR 1:050		
			Amended	2382	
32 KAR 2:220E	1980	2-11-2002	108 KAR 1:010		
Replaced	2242	6-14-2002	Amended	2636	
40 KAR 2:001E	2529	5-14-2002	201 KAR 2:105		
40 KAR 2:075E	2530	5-14-2002	Amended	2406	(See Volume 29)
40 KAR 2:076E	2532	5-14-2002	201 KAR 5:030		
301 KAR 2:140E	1981	1-24-2002	Amended	2639	
301 KAR 2:142E	1982	1-18-2002	201 KAR 9:310		
301 KAR 6:040E	2319	4-15-2002	Amended	2243	
302 KAR 20:110E	1984	2-4-2002	As Amended	2570	6-14-2002
302 KAR 20:140E	1986	2-4-2002	201 KAR 11:420		
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