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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is August 11 and 12, 1986. See tentative agenda on pages 117 and 118 of this Administrative Register.

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

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NOTE: The following agenda for the August meeting of the Administrative Regulations Review Subcommittee is subject to change. Please call (502) 564-8100, ext. 411, if you have questions.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
August 11, 1986
(2 p.m., Room 110, Capitol Annex)

HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Loan Program
11 KAR 3:040. Lender participation requirements.
KHEAA Grant Programs
11 KAR 5:010. Authority, purpose, name of grant programs.
11 KAR 5:030. Student eligibility requirements.
11 KAR 5:031. Repeal of regulations. (Repeals 11 KAR 5:032; 5:035; 5:060; 5:070; 5:080; 5:085; 5:090; and 5:100)
Incentive Loan Program
11 KAR 7:010. Math/science incentive loan program.
11 KAR 7:020. Deferment.
Teacher Scholarship Program
11 KAR 8:010. Teacher scholarship program.
11 KAR 8:020. Deferment.
Distinguished Student Recognition and scholarship Award Program
11 KAR 9:010. Kentucky distinguished student recognition and scholarship award program.

REVENUE CABINET

Income Tax; General Administration
103 KAR 15:050. Filing dates and extensions.
Income Tax; Corporations
103 KAR 16:070. Apportionment; sales factor.
103 KAR 16:080. Apportionment; property factor.
103 KAR 16:090. Apportionment; payroll factor.
Income Tax; Individual
103 KAR 17:080. Retirement income.
Selective Excise Tax; Motor Fuels
103 KAR 43:240. Supplemental highway user motor fuel tax.

KENTUCKY EMPLOYEES' RETIREMENT SYSTEM

General Rules
105 KAR 1:010. Contributions and interest rates.
105 KAR 1:040. Actuarial assumptions and tables. (Repeals 105 KAR 1:080; 1:090; and 1:100)

FINANCE AND ADMINISTRATION CABINET

Board of Licensure for Nursing Home Administrators
201 KAR 6:010. Licensure.

TOURISM CABINET
Department of Fish and Wildlife Resources

Hunting and Fishing
301 KAR 3:080. Prohibition of lead shot for waterfowl and dove hunting.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection

Division of Water Quality
401 KAR 5:090. Control of water pollution from oil and gas facilities.

JUSTICE CABINET

Peace Officer Death Benefits
500 KAR 1:010. Definitions.
500 KAR 1:020. Filing and processing of death benefit claims.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
August 12, 1986
(10 a.m., Room 110, Capitol Annex)

CORRECTIONS CABINET

Office of the Secretary
501 KAR 6:020. Corrections policies and procedures.
501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:040 & E. Kentucky State Penitentiary.
501 KAR 6:050. Luther Luckett Correctional Complex.
501 KAR 6:070 & E. Kentucky Correctional Institution for Women.
501 KAR 6:080. Corrections Cabinet manuals.
501 KAR 6:110 & E. Roederer Farm Center.

TRANSPORTATION CABINET

Administration
600 KAR 1:080. Repeal of transportation related administrative regulations. (Repeals 603 KAR 3:040)
Property Acquisition and Uniform Relocation
600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet. (Repeals 603 KAR 4:015)
Motor Vehicle Commission
605 KAR 1:150. Temporary sales location.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

Instructional Services
704 KAR 3:325. Effective Instructional Leadership Act. (Deferred from the July meeting.)
Teacher Education
704 KAR 15:080. Paraprofessional employees and volunteer personnel. (Agency requests deferral with intent to withdraw.)
Teacher Certification
704 KAR 20:330. Endorsement for individual intellectual assessment. (Deferred from the July meeting.)

LABOR CABINET

Occupational Safety and Health
803 KAR 2:015. General industry standards.
803 KAR 2:020. Adoption of 29 CFR Part 1910.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Group and Blanket Health Insurance
806 KAR 18:030. Group health insurance coordination of benefits.

CABINET FOR HUMAN RESOURCES

Administration
900 KAR 1:006 and E. Limitation on indirect administrative cost in contracts.

Department for Health Services

Local Boards of Health
902 KAR 8:020. Policies and procedures for local health department operations.
Hospitalization of Mentally Ill and Mentally Retarded
902 KAR 12:060. Per diem rate pursuant to the "Patient Liability Act of 1978."
Disability Determination's Unit
902 KAR 16:010. Disability determination's program.

Department for Employment Services

Unemployment Insurance
903 KAR 5:260. Unemployment insurance procedures.
903 KAR 5:270 & E. Maximum weekly benefit rates.

Department for Social Insurance

Medical Assistance
904 KAR 1:013 & E. Payments for acute care and mental hospital inpatient services. (Not Amended After Hearing)

Department for Social Insurance

Food Stamp Program
904 KAR 3:045. Coupon issuance procedures.

REGULATION REVIEW PROCEDURE

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, including public hearing information (described below), the tiering statement required by KRS 13A.210, the regulatory impact analysis as required by KRS 13A.240, the fiscal note required by KRS 13A.250, and the federal mandate comparison required by KRS 13A.245.

All proposed administrative regulations received by the deadline required in KRS 13A.050, as well as the information required above, shall be published in the Administrative Register.

Following publication in the Administrative Register, all proposed administrative regulations shall be referred by the Legislative Research Commission to the appropriate committee or subcommittee for review.

Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations, proposed amendments to administrative regulations, and proposed repeal of administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication of the administrative regulation. 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 (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler immediately by telephone of the cancellation with a follow-up letter and the Compiler will place the letter of cancellation in the file of the original administrative regulation. 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 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.

If an administrative body has several proposed administrative regulations published at the same time, the proposed administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings.

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 following publication shall be sent to the appropriate committee for review at its next meeting. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the regulation shall be sent to the appropriate committee for review at its next meeting. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the subcommittee meets.

EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:300E. Repeal of previous regulations.

RELATES TO: KRS 18A.075, 18A.0751
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 1:010, Definitions; 101 KAR 1:020, General provisions; 101 KAR 1:030, Personnel board procedures; 101 KAR 1:060, Application and examinations; 101 KAR 1:070, Registers; 101 KAR 1:080, Certification and selection; 101 KAR 1:090, Types of appointments; 101 KAR 1:100, Probationary period; 101 KAR 1:110, Promotion, transfer, demotion, and detail to special duty; 101 KAR 1:120, Separations and disciplinary actions; 101 KAR 1:130, Appeals; 101 KAR 1:140, Service regulations; 101 KAR 1:160, Merit system; 101 KAR 1:170, Employee grievances.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:310E. Personnel Board meetings.

RELATES TO: KRS 18A.045, 18A.070, 18A.075
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.045 establishes the Personnel Board and KRS 18A.070 sets forth the procedures for operation of the board. KRS 18A.075 further expands the duties of the board. This regulations is to assure compliance with these statutes and to define specific methods of compliance.

Section 1. Meetings. Regular meetings of the board shall normally be held on the second Friday of each month. The chairman or the executive director shall provide notice of the time, date, and place of any regular meeting to the board members at least seven (7) days in advance of the meeting. Additional meetings may be held by call of the chairman. Written notice of the time, date and place of each meeting shall also be placed on a bulletin board accessible to the public during business hours. A copy of such notice shall be filed with the Secretary of State as a public record. Any request to address the board at a regular board meeting shall be filed with the executive director at least three (3) days before the meeting and shall indicate the subject matter to be addressed and the reason for the request. All such requests to be heard shall be subject to the discretion of the board.

Section 2. Chairman. At the regular meeting in January of each year, the board shall elect one (1) member to act as chairman and one (1) member to act as vice-chairman for a term of one (1) year, or until successors are duly elected. If the office of chairman or vice-chairman is vacated because of death, resignation, or any other manner, before the expiration of term, the board shall elect at the next meeting a successor who shall serve for the unexpired term.

Section 3. Conduct of Meetings. Meetings of the board may be informal, subject to such procedures as may be directed by the chairman.

Section 4. Minutes. The executive director shall attend all meetings of the board, act as its secretary, and record its official actions in the minutes. The time and place of each meeting of the board, names of the board members present, all official acts of the board, the votes of each board member except when the acts are unanimous, and, when requested, a board member's dissent with his reasons shall be recorded in the minutes. The executive director shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting. The minutes or a true copy thereof certified by a majority of the board shall be open to public inspection.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal

procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:320E. Probationary period.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning probationary periods.

Section 1. Initial Probationary Period. (1) An employee initially appointed to a position in the classified service shall serve a six (6) month probationary period, except when appointed to a job classification for which an initial probationary period in excess of six (6) months has been established by 101 KAR 1:325E. For such job classifications, the probationary period shall be the number of months specified to apply to that job classification. No initial probationary period shall exceed twelve (12) months.

(2) The initial probationary period shall be a period of special observation and evaluation of an employee's work and shall be utilized for the most effective adjustment of a new employee. Any employee whose job performance does not meet the required standards shall be dismissed.

(3) An employee who satisfactorily completes the initial probationary period shall be granted status. Unless an employee receives notice prior to the end of his initial probationary period that he is dismissed from his position, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service. If an employee receives notice prior to the end of his initial probationary period that he is dismissed, the effective date of such dismissal may be after the date when the employee would have completed the initial probationary period, if this is necessary to comply with the ten (10) working day notice requirement of subsection (4) of this section.

(4) An employee serving an initial probationary period may be dismissed for unsatisfactory performance and shall not have a right to appeal except as provided by 101 KAR 1:350E, Sections 11 and 12. If an employee is dismissed while serving an initial probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his dismissal. The notification shall advise the employee of the effective date of dismissal and shall include a general statement of the reason for the dismissal. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

(5) An employee who has been dismissed while serving an initial probationary period shall be placed on the eligible register for the job classification from which initially appointed, but shall not be certified to the agency which dismissed him unless that agency so requests.

(6) An employee serving an initial probationary period may be disciplined without the right of appeal except as provided by 101 KAR 1:350E, Sections 11 and 12.

(7) An employee serving an initial probationary period shall not be promoted, demoted, or transferred.

(8) Provisional service in a job class immediately prior to initial probationary appointment to a position in that job classification shall be credited toward the initial probationary period.

(9) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth month following appointment, unless an initial probationary period in excess of six (6) months has been established by 101 KAR 1:325E, in which event it shall be computed from the effective date of appointment to the corresponding date in the month as specified.

Section 2. Promotional Probationary Period. (1) An employee with status who has been promoted to another position in the classified service shall serve a promotional probationary period of six (6) months.

(2) While serving a promotional probationary period, an employee shall retain the rights and privileges of a status employee.

(3) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(4) An employee who fails to satisfactorily complete a promotional probationary period for unsatisfactory performance shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion and shall include a general statement of the reason for failure to complete the promotional probationary period. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel. Failure to complete a promotional probationary period for unsatisfactory performance is not appealable, except as provided in 101 KAR 1:350E, Sections 11 and 12.

(5) An employee who was selected for promotion from a promotional register and who has failed to satisfactorily complete a promotional probationary period shall be placed on the promotional register for the job classification from which he was selected for promotion.

(6) An employee serving a promotional

probationary period may request that he be reverted to his former position or a position in the same job classification as his former position at any time during the promotional probationary period. If his request is granted by the appointing authority, the notification requirements of subsection (4) of this section do not apply.

(7) If there is no position in the same job classification as his former position to which an employee serving a promotional probationary period may be reverted, the provisions of 101 KAR 2:080E shall apply.

(8) An employee serving a promotional probationary period shall not be promoted, demoted or transferred.

(9) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion.

Section 3. Probationary Period Upon Reinstatement. (1) Except as provided in subsection (2) of this section, an employee who is reinstated to a position in the classified service shall serve an initial probationary period.

(2) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.

Section 4. Probationary Period Upon Re-employment. (1) A laid-off employee who is re-employed or who accepts a bona fide written offer of employment to a position shall serve a promotional probationary period as provided in Section 2 of this regulation. He shall be an employee with status and shall have all the rights and privileges of a status employee.

(2) If an employee is serving a promotional probationary period pursuant to this section and fails to satisfactorily complete the promotional probationary period, he shall be notified in accordance with Section 2(4) of this regulation and removed from the position. He shall then be placed on the re-employment register from which re-employed and any other re-employment register in accordance with the provisions of 101 KAR 1:330E, Section 5.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:325E. Initial probationary periods in excess of six (6) months.

RELATES TO: KRS 18A.0751, 18A.111
PURSUANT TO: KRS Chapter 13A, 18A.0751
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.111 provides that specified job classifications may require an initial probationary period in excess of six (6) months. KRS 18A.0751 provides that initial probationary periods in excess of six (6) months be established by administrative regulation. This regulation is to implement these statutory provisions.

Section 1. Initial Probationary Periods for Specific Job Classifications. The following job classifications shall require an initial probationary period in excess of six (6) months, as specified:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months

7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

Section 2. Other Provisions. (1) Except for the length of the initial probationary period, the provisions of 101 KAR 1:320E shall apply to an employee appointed to a job classification specified in Section 1 of this regulation.

(2) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall be required to serve the shorter of the initial probationary periods.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:330E. Employee actions.

RELATES TO: KRS 18A.115, 18A.075, 18A.0751
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service governing promotion, demotion, transfer, reinstatement and re-employment. KRS 18A.115 relates to promotion of career employees. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning these actions.

Section 1. Promotion. (1) Vacancies in the classified service shall be filled by promotion whenever practicable and in the best interest of the service, except as provided by Section 5 of this regulation and 101 KAR 2:080E. Appropriate consideration shall be given to the qualifications, record of performance, conduct and seniority of applicants for promotion.

(2) An employee with status may be promoted from his position in one job classification to an existing vacant position in a different job classification in the classified service having a higher minimum salary or a greater scope of discretion or responsibility as determined by the class specifications for these job classifications.

(3) When it is determined that it is practicable and in the best interest of the service, promotions shall be made on a competitive basis. When such a determination is made, the Commissioner of Personnel, upon written request of the appointing authority, stating the reasons therefore, shall authorize the filling of a particular vacancy in a manner prescribed herein.

(4) For promotions made on a competitive basis, the Commissioner of Personnel shall announce the establishment of a promotional register for a job classification, examine all qualified, applying status employees, and prepare a promotional register of all eligibles in rank order, starting with the highest to lowest examination scores. Selection from passing scores shall be made from the promotional register with appropriate consideration given to the qualifications, record of performance, conduct, and seniority of applicants. When there are less than five (5) eligibles available on a promotional register the appointing authority may request and appoint from an open continuous register.

(5) From promotions made on a non-competitive basis, the Commissioner of Personnel shall examine the employee selected for promotion by the appointing authority to determine whether the employee is qualified for the position prior to the approval of the promotion.

(6) An employee with status who is promoted within the classified service shall serve a promotional probationary period in accordance with 101 KAR 1:320E, Section 2.

(7) Promotions may be inter-agency or intra-agency. If the promotion is inter-agency, the employee retains reversion rights to his former position or a position in the same job classification as his former position in his former agency.

(8) A career employee with status may be promoted to a position in the unclassified service. Any career employee so promoted shall retain his status in the classified service. Upon termination of employment in the unclassified service, a career employee shall revert or, if there is no position available, shall be considered for employment in the classified service in accordance with KRS 18A.130 and 18A.135, and Section 5 of this regulation.

(9) Any employee in the classified service, other than a career employee, may be promoted to a position in the unclassified service, but shall not have reversion rights to any position in the classified service. Any employee, other than a career employee, who was promoted or otherwise changed, with no break in service, from a position in the classified service to a poisition in the unclassified service prior to July 15, 1986, shall retain such reversion rights as existed at the time of the promotion or other action.

Section 2. Demotion. (1) An employee with status may be demoted from his position in one job classification to an existing vacant

position in a different job classification in the classified service having a lower minimum salary range or less discretion or responsibility as determined by the class specifications for these job classifications.

(2) Except as provided in subsection (4) of this section, an employee with status may be demoted only for cause. Demotion for cause shall be in accordance with 101 KAR 1:340E, Section 2.

(3) Demotions for cause shall be intra-agency only.

(4) If, for personal or other reasons, an employee with status requests in writing that he be demoted, the appointing authority may make such a voluntary demotion. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the demotion, identifying information concerning the position demoted from and to, and a waiver of the right of appeal concerning the demotion. A copy of the request shall be forwarded to the Commissioner of Personnel.

(5) Voluntary demotions may be inter-agency or intra-agency.

Section 3. Transfers. (1) An employee with status may be transferrd from his position in one job classification to an existing vacant position in the same job classification or a different job classification having the same salary ranges and the same level of discretion and responsibility as determined by the class specifications for these job classifications. An employee who is transferred shall receive the same salary as he was receiving prior to transfer.

(2) If a transfer is to a position in a different job classification, the employee must meet the minimum requirements of, and may be examined for, the job classification to which transferred, unless the employee has previously had status in that job classification.

(3) Transfers may be on a voluntary of involuntary basis. Unless an employee requests a transfer in writing, such transfer shall be deemed to have been made on an involuntary basis. The appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(4) If the transfer is on an involuntary basis, the employee shall receive notice of his transfer prior to the effective date of such transfer. Following notification of an involuntary transfer, an employee must report for work at the position to which transferred on the effective date of the transfer. The notice shall be in writing, shall state the effective date of the transfer, the reason for the transfer and the employee's selection for transfer, and the employee's obligation to report to the new position. The notice shall also advise the employee that he has the right to appeal the transfer to the board within thirty (30) days of receipt of the notice, excluding the day that he received notification, in accordance with 101 KAR 1:350E. An appeal form shall be attached to the notice. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

(5) If an involuntary transfer is to a position with a work station in a different county, the employee shall receive the notice specified in subsection (4) of this section at least thirty (30) days prior to the effective date of the transfer. In such a case, the appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) days following the effective date of transfer, in accordance with administrative regulations relating to reimbursement of travel expenses, and shall pay the employee's moving expenses, if any. The notice specified in subsection (4) of this section shall advise the employee of these provisions.

(6) Involuntary transfers shall be intra-agency only.

(7) If, for personal or other reasons, an employee with status requests in writing that he be transferred, the appointing authority may make such a voluntary transfer. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the transfer, identifying information concerning the position transferred from and to, and a waiver of the right to appeal concerning the transfer. A copy of this request shall be forwarded to the Commissioner of Personnel.

(8) Voluntary transfers may be inter-agency or intra-agency.

Section 4. Reinstatement. (1) An employee with status who has resigned while in good standing may be reinstated to an existing vacant position in his former job classification, or in any job classification having the same or lower salary range as that currently assigned to the employee's former job classification for which he is qualified.

(2) Except as provided in subsection (3) of this section, reinstatement shall be made only upon request of the appointing authority and with the prior approval of the Commissioner of Personnel. Such approval shall include a finding that the candidate for reinstatement meets the current qualifications for the former job classification. If the reinstatement is to a different job classification, the candidate must pass the appropriate examination prior to reinstatement unless the employee has previously had status in that job classification. An employee who is reinstated shall serve an initial probationary period in accordance with 101 KAR 1:320E.

(3) An employee may be ordered reinstated by the board following a hearing in accordance with 101 KAR 1:360E. An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.

Section 5. Re-employment. (1) An employee with status who has been laid off or a career employee who has been separated by layoff, dismissal other than for cause, and, in the case of an unclassified management employee, resignation other than in lieu of dismissal for cause, may be re-employed within five (5) years from the effective date of layoff or separation.

(a) An employee with status who has been laid off shall be placed on a re-employment register for the job classification from which he was laid off and upon his written request for any other job classifications for which he is qualified. The Department of Personnel shall assist the laid off employee in determining for which job classifications he is qualified. A

laid off employee shall have the right to test for any job classifications for which he is qualified to take an examination. If he passes the examination, he shall be placed on the re-employment register for that class.

(b) A career employee who is eligible for re-employment shall automatically be placed on the re-employment register for the job classification of the last position in the classified service in which he had status. If he wishes to be placed on re-employment registers for other job classifications for which he is qualified and passes the appropriate examination, he shall notify the Department of Personnel in writing. If more than one career employee requests to be placed on the re-employment register for any job classification, the Department of Personnel shall list the names of such career employees in the order of their seniority.

(2) Eligibility to remain on a re-employment list shall expire five (5) years from the effective date of the layoff or separation.

(3) An eligible on a re-employment register shall not be removed from any such register unless:

(a) He notifies the department in writing that he no longer desires consideration for a position on such re-employment register;

(b) He declines two (2) written offers of re-employment or appointment to a position of the same job classification and salary, and located in the same county, as the position from which he was laid off;

(c) Without good cause, he fails to report for an interview after he has been notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) He is unqualified for appointment;

(e) He is unable to perform the duties of the job classification;

(f) He has made a false statement of a material fact in his application;

(g) He has used or attempted to use political influence or bribery to secure an advantage in connection with his placement on the re-employment register;

(h) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the Governor;

(i) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification;

(j) He cannot be located by postal authorities at the last address provided by him; or

(k) He has otherwise willfully violated the provisions of this Act.

(4) When the Department of Personnel is notified by an appointing authority in writing that an eligible on a re-employment register has been re-employed or has accepted a bona fide offer of appointment to any position in the classified service, effective on a specified date, his name may be removed from the re-employment register for all job classifications for which the maximum salary is the same as or less than that of the job classification to which he has been appointed.

(5) When an eligible is removed from a re-employment register he shall be notified in writing and shall be notified of his right to appeal to the board under the provisions of 101 KAR 1:350E.

(6) No vacancy in the classified service may be filled by initial appointment or reinstatement while there are eligibles on a re-employment register for that job classification who are available for the county in which the position is located. Nothing in this section shall preclude the filling of vacant positions by promotion, reversion during a promotional probationary period, reversion of a career employee promoted to the unclassified service, demotion, or transfer.

(7) Upon request by an appointing authority for a register for a job classification for which there is a re-employment register, the Department of Personnel shall certify the name of the eligible with the greatest seniority from the re-employment register. If more than one eligible has the same seniority, all such eligibles shall be certified. If the certified eligible or eligibles decline a bona fide written offer of re-employment or appointment to a position in the classified service, the Department of Personnel shall certify the eligible or eligibles with the next greatest seniority. Laid off employees shall be certified prior to career employees.

(8) An eligible on a re-employment register who is re-employed or who accepts a bona fide written offer of appointment to a position in the classified service shall serve a promotional probationary period in accordance with 101 KAR 1:320E. He shall be an employee with status and shall have all the rights and privileges granted employees with status.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:340E. Disciplinary actions.

RELATES TO: KRS 18A.020, 18A.075, 18A.0751, 18A.095
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the

provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing dismissals, suspensions, fines and other discplinary measures. KRS 18A.095 relates specifically to dismissals, suspensions and other penalizations. KRS 18A.020 relates, in part, to written reprimands. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning these actions.

Section 1. Dismissal. (1) An employee with status may be dismissed only for cause. An employee with status may appeal his dismissal in accordance with 101 KAR 1:350E. An employee serving an initial probationary period may be dismissed in accordance with the provisions of 101 KAR 1:320E, Section 1, and the provisions of this section do not apply. An employee serving an initial probationary period shall not have the right to appeal his dismissal, except as provided by 101 KAR 1:350E, Sections 11 and 12.

(2) Prior to dismissal, an employee shall be notified in writing by the appointing authority of the intent to dismiss him. The notice shall state the date of the intended dismissal, the specific reasons for the intended dismissal, including the statutory or regulatory violation, the specific action or activity on which the intended dismissal is based, the date, time and place of such action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee that he has the right to appear personally, or with counsel if he has retained counsel, at a pre-termination hearing to reply to the head of the cabinet or agency or his deputy or the appointing authority.

(3) Attached to every notice of intent to dismiss shall be a form, prepared by the Department of Personnel, which shall be completed by an employee who wishes to request a pre-termination hearing and forwarded to the appointing authority within five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives notification. If this form is not completed and submitted to the appointing authority within five (5) working days after receipt, it will be deemed that the employee has waived his right to a pre-termination hearing.

(4) If a pre-termination hearing is requested, the appointing authority shall hold the pre-termination hearing within six (6) working days after receipt of the request, excluding the day the request is received.

(5) Pre-termination hearings may be informal. The employee, either personally or by counsel, shall have the opportunity to respond to the charges contained in the notice of intent to dismiss.

(6) Within five (5) working days of the pre-termination hearing, excluding the day of the pre-termination hearing, the appointing authority shall determine whether to dismiss the employee or to alter, modify, or rescind the intended dismissal and shall notify the employee in writing of the decision, and the reasons therefore. If no request for a pre-termination hearing was received, the appointing authority shall notify the employee that his right to such a hearing has been waived.

(7) If the appointing authority determines after the pre-termination hearing to dismiss or otherwise penalize the employee, or if no pre-termination hearing is requested by the employee, the appointing authority shall notify the employee in writing of the effective date of his dismissal or other penalization and the specific reason for dismissal or other penalization, including the statutory or regulatory violation, the specific action or activity on which the dismissal or penalization is based, the date, time and place of such action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee of his right to appeal his dismissal or penalization within thirty (30) days after receipt of the notice, excluding the day he receives notification. An appeal form shall be attached to the notice. The notice must be received by the employee prior to the effective date of dismissal or penalization.

(8) The notice required by subsections (6) and (7) of this section may be combined provided all requirements of both subsections are satisfied.

(9) At the time of notification, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Commissioner of Personnel.

Section 2. Demotion. (1) An employee with status may be demoted for cause. An employee with status may appeal his demotion in accordance with 101 KAR 1:350E.

(2) Prior to the effective date of the demotion, the employee shall be notified by the appointing authority in writing of the effective date of the demotion and the specific reasons for the demotion including the statutory or regulatory violation, the specific action or activity on which the demotion is based, the date, time and place of the action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee with status of his right to appeal his demotion within thirty (30) days after receipt of the notice, exluding the day he receives notification. An appeal form shall be attached to the notice.

(3) At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

Section 3. Suspension. (1) An employee may be suspended, without pay, for cause. An employee with status may appeal his suspension in accordance with 101 KAR 1:350E. An employee serving initial probationary period may be suspended without the right of appeal except as provided by 101 KAR 1:350E, Sections 11 and 12.

(2) A suspension may not exceed thirty (30) working days.

(3) Prior to the effective date of the suspension, the employee shall be notified by the appointing authority in writing of the effective date of the suspension and the specific reason for the suspension including the statutory or regulatory violation, the specific action or activity on which the suspension is based, the date, time and place of the action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee with status of his right to appeal his suspension within thirty (30) days after receipt of the notice, excluding the day he receives the notification. An appeal form shall be attached to the notice.

(4) At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

Section 4. Disciplinary Fine. (1) An employee may be fined, for cause, up to ten (10) days pay. An employee with status may appeal a disciplinary fine in accordance with 101 KAR 1:350E. An employee serving an initial probationary period may be fined without the right of appeal except as provided by 101 KAR 1:350E, Sections 11 and 12.

(2) A disciplinary fine may not exceed ten (10) days pay. The fine shall be computed on the basis of the employee's current salary.

(3) Prior to the implementation of a disciplinary fine, the employee shall be notified by the appointing authority in writing of the amount of the fine, the manner of imposing the fine, including the pay period or periods from which the fine will be deducted, and the specific reason for the fine including the statutory or regulatory violation, the specific action or activity on which the fine is based, the date, time and place of the action or activity, and the names of the parties involved, including any witnesses. The notice shall also advise the employee with status of his right to appeal the fine within thirty (30) days after receipt of the notice, excluding the day he receives notification. An appeal form shall be attached to the notice.

(4) At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel and the board.

Section 5. Written Reprimand. (1) An employee may be given a written reprimand preliminary to a disciplinary action. The written reprimand may be issued by the appointing authority or his designee, an intermediate supervisor, a division director, or the employee's immediate supervisor.

(2) A written reprimand shall be documented in detail. The employee shall be provided with a copy of the documentation and shall have the right to prepare a written response to the written reprimand after review of the documentation.

(3) The written reprimand shall include notice to the employee of his right to respond in writing to the written reprimand and shall advise the employee that the written reprimand, the supporting documentation and his response will be placed in his personnel files.

(4) The employee's written response shall be attached to the written reprimand and the supporting documentation, and a copy of each shall be placed in the employee's personnel file maintained by the agency. A copy of each shall also be forwarded to the Department of Personnel and included in the employee's official personnel file maintained by the department if it complies with the requirements of this section.

(5) Receipt of a written reprimand, in and of itself, is not an appealable penalization. The subject matter of the written reprimand may be grievable under 101 KAR 1:370E.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:350E. Right of appeal.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the comprehensive administrative regulations promulgated by the Personnel Board may include such administrative regulations not inconsistent with KRS Chapter 18A as may be proper and necessary for its enforcement. KRS 18A.095 contain specific provisions regarding an employee's right to appeal. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning an employee's right to appeal to the Personnel Board.

Section 1. Dismissal. A classified employee with status who is dismissed may appeal to the board within thirty (30) days after receipt of the notice of dismissal, excluding the day notification is received.

Section 2. Demotion. A classified employee with status who is demoted may appeal to the board within thirty (30) days after receipt of the notice of demotion, excluding the day notification is received.

Section 3. Suspension. A classified employee with status who is suspended may appeal to the board within thirty (30) days after receipt of the notice of suspension, excluding the day notification is received.

Section 4. Disciplinary Fine. A classified employee with status who is fined as a disciplinary measure may appeal to the board within thirty (30) days after receipt of the notice of imposition of the fine, excluding the day notification is received.

Section 5. Involuntary Transfer. A classified employee with status who is involuntarily

transferred may appeal to the board within thirty (30) days after receipt of the notice of transfer, excluding the day notification is received.

Section 6. Layoff. A classified employee with status who is laid off may appeal to the board within thirty (30) days after receipt of the notice of the layoff, excluding the day notification is received.

Section 7. Reallocation. An employee whose salary range or level, rank, discretion or responsibility as defined by the class specifications involved, has been diminished by the reallocation of his position may, after a determination by the Commissioner of Personnel following the employee's request for reconsideration, appeal to the board. Such appeal must be filed within thirty (30) days after receipt of the notice of the commissioner's determination, excluding the day notification is received.

Section 8. Reclassification. An employee whose salary range or level, rank, discretion or responsibility as defined by the class specifications ivolved, has been diminished by reclassification may appeal to the board. Such appeal must be filed within thirty (30) days after receipt of the notice of the reclassification, excluding the day notification is received.

Section 9. Access to Records. An employee may appeal to the board if his right to inspect or copy records relating to him, including preliminary and other supporting documentation, has been denied, abridged, or impeded by an agency. Such an appeal may be filed only after the employee, applicant or eligible has made a written request to inspect or copy the record and has received a written response to his request which has denied, abridged, or impeded his right to inspect or copy the record in question. Such appeal must be filed within thirty (30) days after the receipt of the written response to his request, excluding the day the written response is received.

Section 10. Evaluation. An employee may appeal an evaluation to the board provided the employee has complied with the review procedure established by 101 KAR 2:110E. Such appeal must be filed with the board within thirty (30) days after the employee has received the written decision of his second-line supervisor, exlcuding the day the written decision is received.

Section 11. Discrimination. An employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, handicap, or age between forty (40) and seventy (70). The employee must first file a complaint or grievance under the grievance procedure as provided in 101 KAR 1:370E unless the action is appealable under Sections 1 through 10 of this regulation, in which case the procedure specified for appeal in the appropriate section must be followed. Following completion of the grievance procedure, an appeal to the board must be filed within thirty (30) days of receipt of the final written determination of the appointing authority, excluding the day the final written determination is received.

Section 12. Political Discrimination. An employee may appeal to the board an action alleged to be based on discrimination due to an employee's political affiliations or opinions. The employee must first file a complaint or grievance under the grievance procedure provided in 101 KAR 1:370E, unless the action is appealable under Sections 1 through 10 of this regulation, in which case the procedure specified for appeal in the appropriate section must be followed. Following completion of the grievance procedure, an appeal to the board must be filed within thirty (30) days of receipt of the final written determination of the appointing authority, excluding the day the final written notification is received.

Section 13. Other Penalization. A classified employee with status may appeal any other action that diminishes the level, rank, discretion or responsibility of the employee without proper cause or which is an abridgement or denial of other rights granted to state employees. The employee must first file a complaint or grievance under the grievance procedure as provided in 101 KAR 1:370E. Following completion of the grievances procedure, an appeal to the board must be filed within thirty (30) days of receipt of the final written determination of the appointing authority, including the day the final written determination is received. Appeals concerning an appointing authority's failure to act may be appealed only pursuant to this section.

Section 14. Appeals by Applicants and Eligibles. (1) Any applicant whose application for admission to an open-competitive examination has been rejected may appeal to the board for reconsideration of his qualifications and for admission to the examination. Such appeal must be filed with the board within thirty (30) days after written notice of rejection, including the reasons therefore, was mailed to the last address provided by the applicant. The Commissioner of Personnel may conditionally admit the applicant to the examination pending reconsideration by the board.

(2) Any appicant who has taken an examination may appeal to the board for review of his rating in any part of such examination to assure that uniform rating procedures have been applied fairly and equally. Such appeal must be filed with the board within thirty (30) days after written notice of examination scores was mailed to the last address provided by the applicant.

(3) An eligible whose name is removed from a register may appeal to the board within thirty (30) days after notice of the action, including the reasons therefore, by the Commissioner of Personnel was mailed to the last address provided by the eligible.

(4) An applicant or eligible may appeal to the Personnel Board regarding access to records pursuant to Section 9 of this regulation. Such appeal must be filed with the board within thirty (30) days after the written response was mailed to the last address provided by the applicant or eligible.

(5) An applicant or eligible may appeal an action alleged to be based on discrimination pursuant to Section 11 or 12 of this regulation.

The compliant or grievance shall be filed with the agency responsible for the alleged discriminatory action. such appeal must be filed within thirty (30) days after the final written determination of the appointing authority is mailed to the last address provided by the applicant or eligible.

(6) As used in this section, applicant or eligible includes current employees who have applied for, or are on any register for, any job classification.

Section 15. Appeals by Probationary Employees. (1) An employee serving an initial probationary period may appeal to the board pursuant to Sections 7, 8, 9, 11 and 12 of this regulation.

(2) An employee serving a promotional probationary period is an employee with status and may appeal to the board pursuant to Sections 1 through 13 of this regulation.

Section 16. Appeals by Unclassified Employees. (1) Any unclassified employee who is dismissed, demoted or suspended, or otherwise penalized for cause may appeal to the board for review thereof pursuant to the applicable section of this regulation.

(2) Any unclassified employee may file an appeal pursuant to Sections 9 and 11 of this regulation.

(3) An unclassified employee serving in a federally-funded time limited position may appeal to the board pursuant to Section 10 of this regulation.

Section 17. General Provisions. (1) All appeals must be filed with the Personnel Board through the office of the executive director.

(2) All appeals must be filed in the office of the executive director within the thirty (30) calendar day period specified in the applicable provisions of this regulation. When the 30th day of the filing period falls on a day when the executive director's office is closed during normal working hours, the appeal may be filed on the next regular working day. Failure to file an appeal within this time limit will result in denial of the appeal.

(3) All appeals must be in writing on the appeal form prescribed by the board. Copies of the appeal form shall be distributed by the Department of Personnel and shall be available at the employee's place of work. If a request for an appeal or a hearing is not on the appeal form, it will be returned.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:360E. Appeal procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. KRS 18A.095 relates specifically to the manner in which hearings are to be conducted. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning the procedures for hearing of appeals.

Section 1. Scheduling of Appeals. (1) Upon receipt of an appeal, the executive director shall transmit copies to the appointing authority and the Department of Personnel.

(2) The executive director shall schedule the appeal for a hearing to be conducted within sixty (60) days after the appeal was filed. Written notice shall be sent to all parties as to the date and place of the hearing. The board shall, within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.

(3) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders to the appealing employee regarding the appeal will be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) Unless otherwise directed by the board, the executive director shall assign the appeal to be heard by any of the following, who shall serve as hearing examiners:

(a) Two (2) non-elected board members;

(b) A non-elected board member and the executive director;

(c) A non-elected board member and a hearing officer;

(d) The executive director and a hearing officer; or

(e) The general counsel of the board and either a non-elected board member, the executive director, or a hearing officer.

(5) Hearing officers employed by the board to assist in the hearing of appeals shall be attorneys authorized to practice law in Kentucky.

(6) Unless the appeal is to be heard by the full board, the executive director shall designate a chief hearing examiner in each appeal. If the appeal is to be heard by the full

board, the chairman shall be the chief hearing examiner.

(7) All appeals shall be scheduled to be heard in Frankfort, Kentucky.

Section 2. Request for Continuance. (1) Any party may request a continuance of a scheduled hearing for good cause. Such request must be in writing, must state the reason for the request, and shall include proposed dates for rescheduling the hearing. The request shall be filed with the board, through the office of the executive director, and mailed to all other parties at least seven (7) days prior to the scheduled hearing.

(2) If a continuance is requested by an employee who would be entitled to back pay if successful in his appeal, the request must include a waiver of back pay from the date of the originally scheduled hearing until the date of the hearing as rescheduled pursuant to his request.

(3) Any party objecting to a requested continuance may file a written objection stating the reason therefore with the board, through the office of the executive director, within four (4) days after the request for continuance was mailed. Copies shall be mailed to all other parties.

(4) A general continuance will be granted only in extraordinary circumstances, unless agreed upon by all parties and the chief hearing examiner.

(5) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(6) All requests for continuances shall be ruled on by the chief hearing examiner. At the direction of the chief hearing examiner, the executive director shall prepare, execute, and transmit to all parties an interim order either granting or denying the requested continuance. If the request is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Pre-Hearing Procedures. (1) Any motion, request or filing required by this section by any party prior to the scheduled hearing shall be in writing, shall be filed with the board through the office of the executive director, and shall be served on all other parties.

(2) The chief hearing examiner shall rule on any motion or request. At the direction of the chief hearing examiner, the executive director shall prepare, execute and transmit to all parties an interim order stating his ruling. Interim orders are not reviewable by the board except as part of the record of the hearing on final review, unless otherwise provided in the interim order.

(3) No motions for summary judgment shall be considered. No motion to dismiss the appeal shall be considered except on the ground that the appeal was not timely filed or, in the case of an appeal filed by an unclassified employee, for failure to state the cause for which he has been dismissed or penalized. If such a motion to dismiss is granted, or if the chief hearing examiner determines, upon review, that an appeal was not timely filed or, in the case of an unclassified employee, failed to state the cause for which he has been dismissed or penalized, an interim order shall be entered and such order shall be reviewed by the full board at its next regularly scheduled meeting.

(4) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders to the appealing employee regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(5) An appealing employee shall notify all other parties and the board in writing of any change of address.

(6) A list of witnesses who may be called to testify at the hearing and any request for the production of documents shall be filed by each party at least five (5) days prior to the scheduled hearing.

(7) Subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(8) Depositions for proof may be taken only in extraordinary circumstances and upon authorization by the chief hearing examiner. A request to take a deposition for proof shall be filed at least seven (7) days prior to the scheduled hearing. Any objections to such request shall be filed at least two (2) days of receipt of the request.

(9) Upon request of all parties and approval by the chief hearing examiner, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the chief hearing examiner may join other parties as necessary to appropriately consider the matter on appeal.

(10) The chief hearing examiner may schedule a pre-hearing conference to be held no more than five (5) days prior to the scheduled hearing. The pre-hearing conference may be utilized to define the issues to be considered at the hearing, to determine which facts, if any, can be stipulated, and to rule on any pending motions or requests, or to address any other matter which will facilitate the hearing of the appeal.

Section 4. Conduct of Hearing. (1) No appeal shall be decided by the board except after a hearing except as provided in Section 3(3) of this regulation. Each appeal shall be decided on its merits and the decision of the board shall be based on the evidence, facts, and information presented at the hearing and contained in the record.

(2) Each party shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts. An appealing employee is not required to retain counsel and may proceed without counsel if he so desires.

(3) Unless the appeal is heard by the full board, both hearing examiners assigned to the appeal, pursuant to Section 1 of this regulation, shall hear the appeal. The chief hearing examiner shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing, including motions filed or presented orally at the hearing. He shall

require an orderly and proper decorum at the hearing, and he shall be authorized to require compliance with his rulings.

(4) Either hearing examiner may participate in the hearing by questioning witnesses. Upon his own motion, or upon request of a party or the other hearing examiner, the chief hearing examiner may require the production by a party of documents, records, or other material relevant to the appeal.

(5) All parties shall have access to information produced by an investigation by the board of any matter related to an appeal. Such information shall be made a part of the record by the chief hearing examiner and any party shall be permitted an adequate opportunity to rebut or comment on such information.

(6) Each appeal shall be decided individually unless all parties and the chief hearing examiner have agreed to the consolidation of cases involving the same or similar facts.

(7) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(8) Technical rules of evidence and the rules of civil procedure do not apply.

(9) The burden of proof shall be on the appointing authority, unless the appeal is one which was required by 101 KAR 1:350E to be first filed through the employee grievance procedure. In such cases, the burden of proof shall initially be on the appealing employee.

(10) The party with the burden of proof shall put on its case first, presenting any witnesses and documentation, subject to cross examination. The opposing party shall then put on its case, presenting any witnesses and documentation, subject to cross examination.

(11) All parties shall provide four (4) copies of any exhibit which is to be introduced as evidence.

(12) A record shall be made by a court reporter of the evidence presented at the hearing.

(13) Appeal hearings shall be open to the public. However, no electronic media coverage, including radio or television broadcasting or video recording, shall be permitted during the hearing.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the chief hearing examiner shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record. If the appeal was heard by the full board, the chairman shall prepare the recommended order.

(2) The findings of fact shall include, but are not limited to, findings that the action being appealed was or was not taken with just cause, that the action being appealed was or was not erroneous or excessive in view of all the surrounding circumstances, or that the action being appealed was or was not taken in violation of laws prohibiting discrimination. Where appropriate, the findings shall also include a determination as to whether the appealing employee was or was not penalized.

(3) The recommendations shall include, but are not limited to, recommendations that the action being appealed be sustained, rescinded, altered or modified, that the appealing employee be reinstated or otherwise be made whole, that the appointing authority be directed to take or refrain from taking some action, or that the appeal be dismissed.

(4) At the direction of the chief hearing examiner, the recommended order shall be entered and transmitted by the executive director to all parties.

(5) Any party may submit written exceptions to the findings of fact and recommendations. Such exceptions must be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, and served on all other parties.

(6) Any party may submit a written response to any exceptions filed with the board. Such response must be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, and served on all other parties.

(7) If it is recommended that an employee who has been dismissed for cause be reinstated, exceptions filed by the appointing authority may include a request, supported by sufficient justification, that the employee not be reinstated to his former position until conclusion of any appeal of the board's decision under KRS 18A.100.

(8) Any exception or response which is not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

(9) Any party may request, in writing, oral argument before the board. Such request must be filed with the board through the office of the executive director within fifteen (15) days of entry of the recommended order, and served on all other parties. Upon such request, or upon its own motion, the board shall permit all parties to present oral argument, subject to such limitations as prescribed by the chairman.

Section 6. Board Review and Action. (1) The full board shall review the record of evidence presented at the hearing, the findings of fact and recommendations of the chief hearing examiner, the written exceptions and responses filed by the parties, and any oral arguments prior to reaching a final determination. Each appeal shall be decided on its merits and the board shall base its decision on the evidence, facts and information contained in the record.

(2) The board may adopt as submitted the findings and recommendations of the chief hearing examiner, amend such findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing examiners for further action as appropriate.

(3) Following consideration by the full board, a final order shall be entered disposing of the appeal. Such order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

(4) If the board finds that the action appealed was taken without just cause or in violation of laws prohibiting discrimination, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay, or otherwise make the employee whole.

(5) If the board finds that the action appealed was excessive or erroneous in view of

all the surrounding circumstances, the board shall alter, modify or rescind the action, or otherwise grant such relief to which the employee is entitled.

(6) If the board's order is appealed by the appointing authority pursuant to KRS 18A.100, the reinstated employee shall remain in the position to which reinstated until the conclusion of such court appeal, unless the order of the board directs otherwise.

(7) When an employee has been dismissed and not ordered reinstated after appeal, the board may direct that his name be placed on an appropriate re-employment register for any similar position.

(8) Unless the order of the board is appealed pursuant to KRS 18A.100, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board. An employee who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at his hearing before the board.

Section 7. Appeal of Board Decision. (1) Any final order of the board may be appealed by any party pursuant to KRS 18A.100.

(2) If the appointing authority appeals the final order of the board, an employee who was ordered reinstated shall remain in the position to which reinstated until the conclusion of such court appeal, unless the order of the board directs otherwise.

(3) If a final order of the board is appealed, an employee who prevails in the final adjudication shall be credited with the amount of leave time used for time spent at his hearing before the board and before the court. An employee who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at his hearing before the board and before the court.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:370E. Employee grievances.

RELATES TO: KRS 18A.075, 18A.0751
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service providing for establishment of a plan for resolving employee grievances and complaints. This regulation is to implement these statutory provisions and to assure a uniform and effective procedure for hearing and acting upon such grievances.

Section 1. General Provisions. (1) A grievance is a complaint filed by an employee which concerns some aspect of his conditions of employment over which his cabinet or agency has control and which has occurred or of which the employee has become aware, through the exercise of due diligence, within thirty (30) days prior to filing.

(2) Any employee in the classified service who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this procedure.

(3) Any employee in the classified or unclassified service and any applicant or eligible who is required by 101 KAR 1:350E to file a grievance prior to filing an appeal to the Personnel Board concerning an action may file a grievance in accordance with this procedure.

(4) Any grievance concerning an action which is appealable directly to the board pursuant to 101 KAR 1:350E may also be filed in accordance with this procedure, but the filing of a grievance will not prohibit the employee from filing an appeal to the board and will not extend the thirty (30) day appeal period.

(5) Employees using this procedure shall be entitled to file their grievances without interference, coercion, discrimination or reprisal.

(6) Appointing authorities shall inform all employees of the provisions of this regulation and of any modifications approved by the Personnel Board pursuant to Section 3 of this regulation.

(7) The Commissioner of Personnel shall make available to the employees, through the appointing authorities, a uniform grievance form to be used for the filing of a grievance. The form shall contain a notice in bold print that, if the grievance concerns an action appealable directly to the board pursuant to 101 KAR 1:350E, the employee's right to file an appeal with the Personnel Board is not extended beyond the thirty (30) day appeal period or otherwise affected by the filing of a grievance.

Section 2. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action which is the subject of the grievance.

For purposes of this subsection, a grievance by an applicant or eligible pursuant to 101 KAR 1:350E, Section 13, shall be filed with the personnel officer of the agency responsible for the action which is the subject of the grievance.

(2) The employee shall set forth in writing the basis of his complaint, any factual allegations to be investigated, and the corrective action or settlement desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance. The grievance may include a request that an investigation be carried out without delay. Any such requested investigation shall be conducted promptly, orderly and fairly.

(3) When a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, handicap or age (forty (40) through seventy (70)), the recipient must immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Any interviews to evaluate or investigate the grievance that are needed with the grievant at the request of the appointing authority outside of normal work hours shall entitle the grievant to compensatory time, provided the grievant is still actively employed by the cabinet or agency.

(5) Any interviews to evaluate or investigate the grievance that are held at the request of the appointing authority with the grievant or with other employees shall not require the use of leave time.

(6) The grievant may have a representative present at each step of the grievance procedure.

Section 3. Grievance Levels. (1) The immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) working days after receipt of the grievance. If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(2) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) working days after receipt of the grievance. If the second line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(3) The third line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) work days after receipt of the grievance. If the third line is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the fourth line supervisor.

(4) The fourth line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) work days after receipt of the grievance.

(5) If the fourth line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within a period of ten (10) work days.

(6) The final determination of the appointing authority concerning any matter required by 101 KAR 1:350E to be filed under the grievance procedure may be appealed by the employee to the Personnel Board within thirty (30) days of receipt of the final determination, excluding the day the final determination is received. An appeal form shall be attached to the final determination of the appointing authority.

(7) Modification of the procedures set forth above may be made upon approval of the Personnel Board to accommodate organizational structure within a cabinet or agency.

(8) Failure by the agency to respond in the prescribed time limits automatically advances the complaint to the next appeal level, unless such time limits have been extended by agreement of the parties.

(9) Any intermediate grievance level may be waived by written agreement of the parties.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:380E. Personnel Board investigations.

RELATES TO: KRS 18A.075, 18A.0751
PURSUANT TO: KRS Chapter 13A, 18A.075
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to make investigations concerning the enforcement and effect of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the Personnel Board shall promulgate such administrative regulations consistent with KRS Chapter 18A as may be proper and necessary for its enforcement. This regulation is to implement these statutory provisions and to provide uniform guidance to state agencies and employees concerning investigations conducted by the board.

Section 1. General Provisions. (1) Upon petition of a citizen, taxpayer, interested

party or employee, the board shall conduct an investigation into any matter concerning the enforcement and effect of KRS 18A.005 to 18A.200 and the administrative regulations promulgated pursuant thereto.

(2) Such petition shall state the reason for the requested investigation including a description of the situation or circumstances involved and an explanation of how such situation or circumstances concerns the enforcement and effect of any statutory or regulatory provision.

(3) A petition requesting an investigation may be held confidential, upon request and approval by the board or upon the board's own motion, pending completion of the investigation.

(4) The board upon its own motion may conduct an investigation into any matter concerning the enforcement and effect of KRS 18A.005 to 18A.200 and the administrative regulations promulgated pursuant thereto. The board shall make such investigations as may be requested by the Governor or the General Assembly and report thereon.

(5) The board, any member of the board, and the executive director and any hearing officer of the board may subpoena witnesses and compel the production of documents or other records pertinent to any investigation.

(6) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by such an investigation and such information shall be presented at the hearing.

Section 2. Preliminary Investigation. (1) Any investigation initiated by petition or upon the board's motion shall be assigned to an investigative examiner for review and preliminary investigation. An investigative examiner may be a hearing officer or the general counsel or the executive director of the board or a member of the board.

(2) The investigative examiner shall review the petition and shall require the testimony of such witnesses and the production of such documents or other records as he deems necessary.

(3) Following his review and preliminary investigation, the investigative examiner shall prepare a report, including such findings as are appropriate, for the board's review.

(4) Upon review of the investigative examiner's report, the board may adopt the report and close the investigation, set the matter for an investigative hearing, direct the investigative examiner to conduct an additional investigation, or take such other action as it deems appropriate.

Section 3. Investigative Hearing. (1) Upon review of the investigative examiner's report, or upon its own motion, the board may direct that an investigative hearing concerning the matter by scheduled.

(2) An investigative hearing shall be scheduled and conducted, as appropriate, in accordance with the provisions of 101 KAR 1:360E.

(3) Any employee or appointing authority substantially affected by the report of the investigative examiner shall be entitled to participate in the investigative hearing. Participation shall include the right to representation by counsel, the right to cross examine witnesses and present witnesses in their own behalf, and to submit documents or other records as evidence.

(4) Following completion of the investigative hearing, the board shall enter an order containing finds of fact and recommendations. As directed by the board, the order shall be prepared and transmitted by the executive director to the parties.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Senate Bill 340, enacted by the 1986 General Assembly, divides the authority to promulgate administrative regulations concerning state employment and state employees covered by the merit system between the Department of Personnel and the Personnel Board. SB 340 specifically identifies those subject matters to be addressed by the Personnel Board and delineates certain provisions to be included in such regulations. SB 340 becomes effective on July 15, 1986. This emergency is necessary to implement the provisions of SB 340 on the effective date of SB 340, since promulgation of an appropriate administrative regulation through the normal procedure could not be accomplished in a timely manner. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
PHILIP TALIAFERRO, Chairman

PERSONNEL BOARD

101 KAR 1:390E. Restoration from military duty.

RELATES TO: KRS 61.371 to 61.379
PURSUANT TO: KRS Chapter 13A, 61.379
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 61.379 directs the Personnel Board to adopt regulations to carry out the provisions of KRS 61.371 to 61.379. This regulation is to implement these statutory provisions.

Section 1. Restoration from Military Duty. (1) Any public employee, as defined in KRS 61.371(1), who meets the requirements of KRS 61.373 shall be restored to his former position or a position of like status and pay within sixty (60) days after written application.

(2) If the employee is physically qualified to perform the duties of his former position, he shall be restored to such position if it exists and is not held by an employee with greater seniority, otherwise to a position of like seniority, status and pay.

(3) If the employee is not qualified to perform the duties of his former position by reason of disability sustained during such military service, he shall be placed in another position, the duties of which he is qualified to perform and which will provide him like seniority, status, and pay or the nearest approximation consistent with the circumstances of his case.

(4) An employee restored to a position in accordance with this regulation shall not be discharged without cause within one (1) year after his restoration.

(5) An employee restored to a position in accordance with this regulation shall be restored without loss of seniority, as provided in KRS 61.375.

(6) If restoration of an employee under this regulation displaces an employee with less seniority who is occupying that employee's former position, statutory and regulatory provisions relating to layoff and re-employment shall apply.

(7) Leaves of absence to permit induction into military service shall be granted in accordance with KRS 61.377(8).

(8) If an employee advises his employer that he is leaving his position to perform military duty, the employer shall advise the employee in writing of his rights under KRS 61.371 to 61.379.

Section 2. Appeal to the Personnel Board. (1) A public employee who is not restored to a position within sixty (60) days after written application may appeal to the board within thirty (30) days after this sixty (60) day period.

(2) Any public employee who is discharged without cause within one (1) year after restoration may file an appeal to the board within thirty (30) days of the effective date of discharge.

(3) Appeals filed pursuant to this section shall be in accordance with 101 KAR 1:350E.

(4) Appeals filed pursuant to this section shall be heard by the board in accordance with 101 KAR 1:360E.

(5) In the case of any employee who is entitled to be restored to a position in accordance with KRS 61.371 to 61.379, if the Personnel Board finds that the department or agency with which such person was employed immediately prior to his military duty is no longer in existence and its functions have not been transferred to any other agency or that for any reason it is not feasible for such person to be restored to employment by the department or agency, the board shall determine whether or not there is a position in any other department or agency of the same public employer for which the person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the board determines that there is such a position, the person shall be restored to the position by the department or agency in which the position exists.

(6) If the board finds that the employer has violated the provisions of KRS 61.371 to 61.379 or this regulation, it shall direct the employer to comply with the provisions and to compensate the employee for loss of pay suffered by reason of the violation in accordance with KRS 61.379.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:005E. Repeal of previous regulations.

RELATES TO: KRS 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.110 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 1:010, Definitions; 101 KAR 1:020, General provisions; 101 KAR 1:030, Personnel Board procedures; 101 KAR 1:040, Classification plan; 101 KAR 1:051, Compensation plan; 101 KAR 1:060, Application and examinations; 101 KAR 1:070, Registers; 101 KAR 1:080, Certification and selection; 101 KAR 1:090, Types of appointments; 101 KAR 1:100, Probationary period; 101 KAR 1:110, Promotion, transfer, demotion, and detail to special duty; 101 KAR 1:120, Separations and disciplinary actions; 101 KAR 1:130, Appeals; 101 KAR 1:140, Service regulations; 101 KAR 1:145, Employee evaluation plan; 101 KAR 1:150, Incentive programs; 101 KAR 1:160, Merit system; and, 101 KAR 1:170, Employee grievances.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:010E. Definitions.

RELATES TO: KRS 18A.005
PURSUANT TO: KRS Chapter 13A, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, as they relate to the classified service. This regulation is necessary to define key terms used in the regulations which may not be defined in KRS Chapter 18A.

Section 1. The following words and phrases when used in these regulations have the following meanings unless otherwise clearly indicated in the context:
(1) "Commissioner" means the Commissioner of the Department of Personnel as provided for in KRS 18A.015;
(2) "Board" means the Personnel Board created by KRS 18A.045;
(3) "Appointing authority" means the agency head or any person whom by law he has authorized to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position and personnel actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the commissioner.
(4) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS Chapter 18A. Base salary or wages shall be increased when an employee receives any increment due to a promotion, reallocation, reclassification, salary adjustment, or probationary and annual increment. The employee's base salary or wages shall be increased by the amount of such increment.
(5) "Appeal form" means the form prescribed by the Personnel Board which is to be used in filing appeals to the board.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:020E. Classification plan.

RELATES TO: KRS 18A.005, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the classification plan for all positions in the classified service so that the same qualifications may reasonably be required for and the same schedule of pay equitably applied to all positions in the same job classification. This regulation is to assure uniformity and equity in administering the plan, in accordance with requirements of the statutes.

Section 1. Preparation of Plan. The commissioner shall prepare and maintain a comprehensive position classification plan for classified state employees. The plan shall be based on investigation and analysis of all the duties and responsibilities assigned to each position, and each position shall be allocated to its proper job classification in the classification plan after consultation with appointing authorities. When complete, the classification plan shall include for each job classification an appropriate title and a class specification, including characteristics of the class, examples of duties and responsibilities, and the required education, experience and other qualifications. The plan shall be reviewed at least once every four (4) years.

Section 2. Allocation of Positions. (1) Every position shall be allocated to the appropriate job classification by the commissioner, after consultation with appointing authorities and consideration of their recommendations. Every position shall be placed in a specific job classification before final administrative action can be taken on appointments, transfers, promotions, changes in pay-grade status, or payment of salary involving the position. Such allocations become effective only after written approval of the commissioner.
(2) Those positions which are sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and which merit approximately equal pay shall be allocated to the same job classification.
(3) The commissioner shall allocate new positions to the proper job classification upon receipt of the prescribed forms of statements of duties, responsibilities and requirements of such positions from the appointing authority.
(4) The commissioner shall reallocate existing positions when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The correction of the classification of an existing position by placement of the position into the job classification that is appropriate for the duties the employee has been and shall continue to perform is known as a reallocation. In all cases of reallocation, the employee in the position when it is reallocated shall serve therein with the corresponding status that he had before the position was reallocated.

(a) The appointing authority shall notify an employee in writing whose position is reallocated of the reallocation, of the reasons therefor, and of his right to request reconsideration by the commissioner within ten (10) working days of receipt of the notice, excluding the day he receives notification. A copy of the form for requesting reconsideration shall be attached to the notice.

(b) An employee who files a written request for reconsideration of the reallocation of his position with the commissioner shall be given a reasonable opportunity to be heard. The commissioner shall make a determination within sixty (60) days after the request has been filed by an employee. Such determination shall be in writing an shall advise the employee of the reason therefor. A copy of the appeal form shall be attached to the determination. An employee may appeal the determination of the commissioner to the board in accordance with 101 KAR 1:350E.

(5) The commissioner shall change the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs. This type of action is known as reclassification. In all cases of reclassification, the employee shall serve with the corresponding status he had before he was reclassified, providing he meets the qualification requirements for the job classification to which he is reclassified. Where a reclassification diminishes the salary range or level, rank, discretion, or responsibility as defined by the class specifications involved, the appointing authority shall notify the employee, in writing, of the reclassification and the reasons therefor. A copy of the appeal form shall be attached to the notice. An employee may appeal such reclassification in accordance with 101 KAR 1:350E.

Section 3. Interpretation of Class Specifications. (1) Class specifications are descriptive and explanatory. They are designed to indicate the kinds of positions which should be allocated to the various job classifications as determined by their characteristics and duties or responsibilities.

(2) Characteristics of a class are general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities are not to be construed as describing what the duties or responsibilities of any position shall be and are not to be construed as limiting the appointing authorities' ability to take, add to, or otherwise alter the duties and responsibilities of a position. The use of an individual expression or illustration as to duties or responsibilities shall not be regarded as excluding assignment of others not mentioned which are of similar kind or quality.

(4) Minimum requirements are comprehensive statements of the minimum background as to education, experience and other qualifications which will be required in all cases as evidence of an appointee's ability to perform the work properly.

Section 4. Official Copy of Class Specifications. (1) The Department of Personnel shall maintain a master set of all approved class specifications. Such specifications shall constitute the official class specifications in the classification plan. The copies of the specification for each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The Department of Personnel shall provide each appointing authority with a set of the class specifications of those job classifications to which positions in his department are allocated and such other job classifications as it sees fit. Class specifications shall be available for inspection by any employee or the public under reasonable conditions during business hours.

Section 5. Title of Position. The title of the job classification to which a position has been allocated shall be used to designate such position in all budget estimates, payrolls and other official records, documents, vouchers, and communications in connection with all personnel processes. For purposes of internal administration or for any other purposes not involving the personnel processes, any office title, abbreviation, or code symbol may be used in lieu of the class title.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:030E. Compensation plan.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
PURSUANT TO: KRS Chapter 13A, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, and after conducting wage and salary surveys of relevant labor markets, the commissioner shall prepare a compensation plan for all classes of

positions based on the concepts of internal job equity and external market competitiveness. The plan shall provide pay grades or specific salary rates as appropriate for the various job classifications. Each job classification shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for job classifications shall be consistent with the functions outlined in the classification plan. Amendments to the pay plan shall be made in the same manner.

(2) The plan shall take into account such factors as:

(a) The relative levels of duties and responsibilities of various job classifications;

(b) Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and

(c) The state's financial resources.

(3) Each employee shall be paid in accordance with the pay grade or salary rate set forth in the pay plan for the job classification in which he is employed.

(4) The plan shall be reviewed annually.

Section 2. Appointments. Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and/or experience over and above the minimum requirements set for the job classification. Such additional qualifications must be in the same or related area of the job duties of the position to which the appointment is to be made. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 3. Re-entrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place re-employed, reinstated, and former employee probationarily appointed at a salary:

(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;

(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;

(c) In accordance with the standards used for making new appointments; or

(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by lay-off and who are reinstated or re-employed in the same or a similar job classification within five (5) years from the date of lay-off may receive the salary they were receiving at the time of lay-off, even if such salary is above the maximum of the pay grade.

(3) Former employees re-employed, reinstated or probationally appointed to a salary:

(a) Below the midpoint of the pay grade shall be considered for a probationary increment at the time of completion of the probationary period;

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of re-employment, reinstatement or appointment.

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

(2) Demotion. An employee who is demoted may have his salary changed to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070E, Section 9, may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary

changed to the rate received at the time he left the classified service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class re-evaluation and grade adjustment under Section 9 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a salary adjustment not to exceed ten (10) percent when standards of internal equity justify such an adjustment.

(c) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 9(3) of this regulation.

(d) Inasmuch as the appointing authority has the option of not providing salary adjustments under this subsection, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

Section 5. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted a probationary increment at the beginning of the month following completion of the probationary period, except as specified under Section 3(3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates will be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or re-employment, pursuant to Section 3(3) of this regulation.

(b) When an employee returns from leave without pay pursuant to Section 5(5) of this regulation.

(3) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

(4) Annual increment. All employees shall receive statutory annual increments on the employee's regularly scheduled increment date. An employee whose annual increment places his salary above the maximum of the pay grade shall have his annual increment added to his base salary or wages. For purposes of calculating the statutory annual increment: Educational achievement awards, employee suggestion systems awards and overtime and/or compensatory leave payments and performance based payments shall not be added to base salary or wages.

(5) Return from leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

(6) Return from military leave. An employee returning to duty from military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received.

(7) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part time to full time, part-time service shall be counted in determining increment eligibility for a full-time employee; in those cases where an employee is changed from full time to part time, full-time service shall be counted in determining increment eligibility for a part-time employee.

Section 6. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent, full-time employee with status may receive a lump sum educational achievement award for either:

(1) Satisfactorily completing 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction. The lump sum educational achievement award in this instance shall be ten (10) percent of the employee's annual base salary. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving a high school diploma or GED Employees receiving either a high school diploma or GED shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary.

The lump sum payment shall not be added to the employee's base salary or wages.

Section 7. Employee Suggestion Award. An employee may receive a lump sum payment employee suggestion award in accordance with 101 KAR 2:120E. Such lump sum payment shall not be added to the employee's base salary or wages.

Section 8. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such

increase shall be determined by the commissioner and shall be uniform for all eligible employees.

Section 9. Class Re-evaluation and Grade Adjustment. (1) Class re-evaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 9(1) of this regulation, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 4(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class re-evaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 10. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100E, Section 4, and 101 KAR 3:010E, Section 4, and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
~~FILED~~ WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:040E. Applications and examinations.

RELATES TO: KRS 18A.030, 18A.110, 18A.120
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110, 18A.150
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the commissioner. This regulation is necessary to implement these statutory requirements and to assure uniformity in administering exams.

Section 1. Notices of Examinations. Examinations for entrance to the classified service shall be conducted on an open-competitive basis. For those job classifications in which there is expected to be a considerable and recurring need of eligibles, the commissioner shall establish a recruitment program which shall be both positive and continuous. Under such plan, applications may be accepted at any time and examinations held whenever and wherever the commissioner deems it desirable for the service. For those job classifications for which continuous recruitment is not needed, special announcements will be used. Eligibles will be listed in rank order irrespective of dates on which the examination was taken. Notice of examinations shall be announced publicly fifteen (15) days prior to opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient. The public notice of examination shall specify the title and minimum salary of the job classifications; the minimum qualifications required; the final date on which application will be received; the relative weights to be assigned to different parts of the examination; and all pertinent

information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the commissioner with regard to education, experience, age, physical condition, and such other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 3. Previous Experience. In determining whether a state employee meets the minimum requirements for experience required for a job classification, the department shall, in counting state service experience, consider only experience gained during permanent full-time employment.

Section 4. Filing Applications. (1) All applications shall be made on forms prescribed by the commissioner. Such application may require information concerning personal characteristics, education, experience, references, and other pertinent information. When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement. All applications shall be signed and the truth of the statements contained therein certified by such signatures. Applicants must meet the minimum qualifications specified in announcements as to education and experience, but in no case shall admittance to the examinations constitute assurance of a passing grade.

(2) For those job classifications for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

(3) For those job classifications for which continuous recruitment is not needed, special announcement bulletins will be used. Applicants shall have fifteen (15) calendar days to apply for these special openings. The applications will be processed and those applicants who meet the minimum requirements will be notified of the testing dates.

Section 5. Disqualification of Applicants. The commissioner may refuse to examine an applicant, or, after examination, may disqualify such applicant, remove his name from a register, refuse to certify any eligible on a register or may consult with the appointing authority in taking steps to remove such person already appointed if:

(1) It is found that he does not meet any one of the preliminary requirements established for the examination for the class of position;

(2) He is unable to perform the duties of the class;

(3) He has made a false statement of material fact in his application;

(4) He has used or attempted to use political pressure or bribery to secure an advantage in the examination;

(5) He has directly or indirectly obtained information regarding the examination to which, as an applicant, he was not entitled;

(6) He has failed to submit his application correctly or within the prescribed time limits;

(7) He has taken part in the compilation, administration, or correction of the examination for which he is an applicant;

(8) He has previously been dismissed from a position in the state service for cause or has resigned while charges for dismissal for cause of which he had knowledge were pending;

(9) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the governor;

(10) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification; or

(11) He has otherwise willfully violated the provisions of KRS Chapter 18A.

Section 6. Advance Examinations. Any applicant who does not meet minimum requirements as to education but who will meet these requirements as a result of the completion of further educational work which he has scheduled for the six (6) months following the date of receipt of application, may be allowed to take the examination at the discretion of the commissioner. An applicant taking the examination under this provision shall have his or her name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 7. Character of Examinations. Examinations shall be practical in nature, constructed to reveal the capacity of the candidate for the particular job classification for which he is competing and his general background and related knowledge, and shall be rated impartially. The commissioner may use a rating of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness which in his judgement serves the need to discover the relative fitness of applicants.

Section 8. Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) The commissioner may designate monitors in various parts of the Commonwealth to take charge locally of examinations under instructions prescribed by him, provide for the compensation of such monitors, and make arrangements for the use of public buildings in which to conduct the examinations.

(3) Retest procedures.

(a) For open continuous testing an applicant may be admitted to the same exam or its alternate no more than two (2) times within a regular workweek.

(b) For open continuous testing an applicant shall not be permitted to take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date such test is taken.

(c) Retest procedures for examinations listed on special announcements shall be stated on the bulletin.

Section 9. Rating Examinations. The commissioner shall determine the rating or standing of applicants on the register for all examinations. Such final rating shall be based

upon a weighted average of the various parts of the total examination. All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 10. Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the commissioner shall determine a procedure for the evaluation of the education and experience qualifications of the applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinency of the education.

(2) The commissioner shall investigate the candidate's educational record form. The commissioner may investigate the candidate's work history. If the results of this investigation bring out information affecting the rating of education and experience, the commissioner may rate the candidate accordingly or make the necessary revision of the rating and so notify the candidate.

Section 11. Oral Examinations. When an oral examination forms a part of the total examination for a position, the commissioner shall appoint one (1) or more oral examination panels as needed. An oral examination panel shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined. Whenever practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel. A member of an oral examination panel shall disclose each instance in which he knows the applicant personally and may refrain from rating such applicant.

Section 12. Notice of Examination Results. Each competitor shall be notified of his final rating as soon as the rating of the examination has been completed. Eligibles shall be entitled to information concerning their relative position on the register upon request and presentation of proper identification.

Section 13. Adjustment of Errors. An error in the rating of an examination, if called to the attention of the commissioner within thirty (30) days after receipt by the applicant of the notice of examination results shall be corrected by the commissioner provided, however, that such corrections shall not invalidate any certification and appointment previously made.

Section 14. Special Examinations. Except in the case of an error in the examining of an applicant, no applicant shall be given a special examination unless the board by formal recorded action finds that the applicant's failure to take or complete an examination was due to circumstances entirely beyond the control of the applicant. The board's findings and recommendations shall be recorded in its minutes. No claim for a special examination shall be allowed unless it is filed in writing with the board within fifteen (15) days after the date of the original examination. Any special examination shall be constructed on a pattern similar to, and as extensive as, the original examination. Any such special examination shall not invalidate any certification or appointment previously made.

Section 15. Examination Records. The commissioner shall be responsible for the maintenance of all records pertinent to examination programs. Applications and other necessary examination records shall be kept during the life of the register.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:050E. Registers.

RELATES TO: KRS 18A.005, 18A.110, 18A.120
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.040, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the commissioner. This regulation is necessary to comply with these statutory requirements.

Section 1. Responsibility for Maintenance of Registers. It shall be the duty of the appointing authorities to notify the commissioner as far in advance as possible of vacancies in full-time or part-time classified positions which may occur in the agencies. The commissioner shall be responsible for the establishment and maintenance of appropriate registers for all full-time or part-time classified positions and for the determination of the adequacy of existing registers.

Section 2. Open-Competitive Registers. After each open-competitive examination, the commissioner shall prepare a register of persons with passing grades seeking employment in a full-time or part-time classified position. The names of such persons shall be placed on the register in the order of their final ratings,

starting with the highest. Registers for job classifications listed on the special announcement bulletins shall be filled no sooner than five (5) days after the final testing date.

Section 3. Use of Related Registers. If a full-time or part-time vacancy exists in a job classification for which there is no appropriate register, the commissioner may prepare a full-time or part-time register for the job classification from one (1) or more existing related registers. The commissioner shall select registers from job classifications for which the minimum qualifications are comparable to or higher than those required for the job classification in which the vacancy exists. The commissioner may, if appropriate, re-rate training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 4. Duration of Registers. (1) A register shall expire automatically at the end of two (2) years from the time of its establishment unless the register is extended by the commissioner for a period not to exceed one (1) additional year or terminated by the commissioner.

(2) The life of registers for job classifications for which continuous recruitment and examination is conducted shall be indefinite but may be terminated by the commissioner. The names of eligibles shall be added to and removed from such registers on a continuous basis. Normally, the name of an eligible shall not remain on a register for a job classification in the continuous program for longer than two (2) years from the date of its entry on the register. Whenever the name of an eligible is removed from a register, the eligible shall be notified in writing.

(3) When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the job classification is impracticable, the register will be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 5. Replenishment of Registers. If the commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register.

Section 6. Removal of Names from the Register. (1) Reasons for removal. The commissioner may, on receipt of authoritative information, remove the name of an eligible from the appropriate full-time or part-time register:

(a) If the eligible cannot be located by postal authorities at the last address provided by the eligible;

(b) If the eligible responds in writing that he no longer desires consideration for position in that class;

(c) If the eligible declines an offer of probationary appointment to the class for which the register was established;

(d) If it is shown that the eligible is not qualified or is unsuitable for appointment to the class for which the register is established;

(e) If the eligible fails to reply within a period of ten (10) calendar days of the receipt of the written request of the appointing authority for an interview, or fails to appear for an interview which he has scheduled with the appointing authority without good cause;

(f) If the eligible accepts an appointment and fails to present himself for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority; or

(g) If the eligible states in writing that he is not available for appointment or does not wish to be considered for appointment.

(2) The names of eligibles who have been considered for a probationary full-time or part-time appointment three (3) times by any one (1) or more appointing authorities and have not been offered employment may be removed from a full-time or part-time register if it is determined they would not be suited to the type of work found in the class for which the register is established.

(3) When the Department of Personnel is authoritatively notified that an eligible has accepted a bona fide offer of probationary appointment to any full-time or part-time classified position, effective on a specified date, his name may be removed from the registers for all classes for which the maximum salary is the same or less than that of the class to which he has been appointed.

(4) Whenever an eligible's name is removed from a full-time or part-time register for reasons cited in subsections (1), (2) and (3) of this section, the commissioner shall notify, in writing, the eligible of this action and the reasons therefor, together with his right of appeal to the board pursuant to 101 KAR 1:350E. A copy of the appeal form shall be attached to the notice. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the commissioner or in accordance with the decision of the board upon appeal.

(5) Whenever an eligible notifies the Department of Personnel in writing that he is unavailable for employment or employment consideration, the department may remove the name of that eligible from the appropriate full-time or part-time register without further notification to the person.

Section 7. Promotional Register. At the request of the appoint authority, the commissioner shall prepare a register of status employees interested in promotion to a full-time or part-time classified position who meet the minimum requirements and has obtained a passing grade on the competitive promotional examination. The names of such employees shall be placed on the register in the order of their final ratings, starting with the highest. The register shall be certified to agencies for their consideration in filling vacancies from a promotional register.

Section 8. Full-Time or Part-Time Re-employment Registers. The commissioner shall prepare re-employment registers in accordance

with 101 KAR 1:330E, Section 5.

Section 9. Cooperation with Other Merit Systems. The commissioner may cooperate with the governmental agencies of other jurisdictions whose merit systems operate in conformity with standards comparable to those contained in these regulations. The commissioner may announce and administer joint examinations and establish joint lists from which eligibles shall be certified for appointment in accordance with the provisions of these regulations.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:060E. Certification and selection of eligibles.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacancy by selection of an eligible from a register established on the basis of an open-competitive examination, the appointing authority shall submit a request for certification to the commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. (1) Upon receipt of a requisition, the commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the appointment. If one (1) position is involved, he shall certify and submit from the register for that job classification the names of the persons whose scores are included in the highest five (5) scores earned on the examination, providing the commissioner shall fix a reasonable maximum number of eligibles certified. If more than one (1) vacancy is involved, either in one (1) or more agencies, the commissioner shall certify sufficient additional names for the agencies' consideration in filling the total number of vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. If the register, established as a result of the open-competitive examination for a specific class, is exhausted, the commissioner shall certify and submit names in accordance with the above procedure in accordance with 101 KAR 2:050E, Section 3. The life of a certificate during which action may be taken shall be forty-five (45) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

(2) Any employee who has been dismissed for cause or who has resigned while charges for dismissal for cause were pending and who seeks further employment with the state shall not be certified to the agency from which separated unless the agency requests such certification.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the commissioner.

Section 4. Selective Certification. (1) The appointing authority may specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority may specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the

qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(3) To facilitate the employment of participants in employment programs authorized by federal or state law where the participants are employees of state agencies, the appointing authority may specify in writing that participation in such a program be required for a position. If, after investigation, the commissioner finds that such action is necessary to facilitate the career employment of participants in such a program, the commissioner may certify in order of rank on the register, the names of those persons who have been participants for at least six (6) months in such programs. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

Section 5. Selection. (1) Written inquiry as to availability must be sent to each eligible certified for appointment unless it is impractical to do so, except that evidence of having sent a written notice to each eligible reported as having failed to reply to the inquiry or unavailable for appointment must be submitted with a report of action on a certification. All supporting documentation of negative action must accompany the returned register certificate.

(2) In making appointments from the open-competitive register, the appointing authority shall select for each position a person whose score is included in the five (5) highest scores, exclusive of the names of those persons:

(a) Who decline appointment or request that they not be considered for appointment;

(b) Who fail to reply within a period of ten (10) calendar days to the written request of the appointing authority for an interview or who do not arrange to report for such an interview within a reasonable time, or who fail to appear for an interview which they have arranged with the appointing authority;

(c) Who accept an appointment and fail to present themselves for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority;

(d) To whom the appointing authority offers an objection in writing based on 101 KAR 2:040E, Section 5, which objection is sustained by the commissioner;

(e) Who are not available for appointment.

(3) The final selection by the appointing authority shall be reported in writing to the commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the commissioner the non-availability of any eligibles passed over for that reason.

(4) If, in the exercise of his choice, the appointing authority passes over the name of an eligible on a register in connection with three (3) separate appointments which he has made from the register, written request may be made of the commissioner that the name of such eligible be omitted from any subsequent certifications from the same register to the same appointing authority. This request must contain sufficient evidence to indicate the eligible's unsuitable characteristics for an appointment in the job classification for which the register was established. If the commissioner approves such request, either the name of such eligible shall not thereafter be certified to him from that register for other vacancies in that class, or his name will be removed from this register.

Section 6. Certification from the Promotional Register. Whenever a vacancy is to be filled from a promotional register established as a result of a competitive examination, the commissioner shall certify the names of eligibles in accordance with 101 KAR 2:050E, Section 7.

Section 7. Certification of Names from the Re-employment Register. Whenever a vacancy is to be filled from a re-employment register, the commissioner shall certify the names of eligibles in accordance with 101 KAR 1:330E, Section 5.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
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STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:070E. Types of appointments and detail to special duty.

RELATES TO: KRS 18A.005, 18A.110, 18A.115, 18A.120
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the various types of appointments, such as probationary, emergency, provisional, reinstatement, and for such other regulations, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This regulation is necessary to comply with these statutory requirements.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled

by promotion, transfer, or demotion, shall be filled by probationary appointment, re-employment, reinstatement, emergency appointment or provisional appointment.

Section 2. Probationary Appointment. The appointment to a permanent position in the classified service through certification in accordance with 101 KAR 2:060E from an open-competitive register shall constitute probationary appointment.

Section 3. Provisional Appointment. When a vacancy is to be filled in a position of a job classification for which there are less than three (3) eligibles available for certification, the appointing authority, with the prior approval of the commissioner, may make a provisional appointment to fill the position. A provisional appointee must be certified by the commissioner as meeting at least the minimum qualifications established for the class of position. No such provisional appointment shall be continued longer than six (6) months nor shall successive provisional appointments of the same person be made to the same position.

Section 4. Emergency Appointment. The appointment of an employee without regard to the examination requirements of these regulations to any position by reason of a governmental emergency shall constitute an emergency appointment. An emergency appointment may not exceed thirty (30) working days in duration and is non-renewable. Emergency appointments shall have the prior consent of the commissioner.

Section 5. Temporary Appointments. The appointment of a person to a temporary position shall constitute a temporary appointment. Such appointments shall be subject to the prior approval of the commissioner. Each appointee must be approved by the commissioner as meeting at least the minimum qualifications established for the job classification. Such appointment shall be for a specified period of time not to exceed six (6) months and shall not be renewable.

Section 6. Re-employment. An employee who has been laid off may be re-employed in accordance with 101 KAR 1:330E, Section 5.

Section 7. Reinstatement. An employee who has resigned in good standing or who has been ordered reinstated by the board or a court to a position in his former class or a position of like status and pay may be reinstated in accordance with 101 KAR 1:330E, Section 4.

Section 8. Seasonal Appointment. The appointment of a person to a position that is temporary, that coincides with a particular season or seasons of the year, and that does not exceed eleven (11) months duration shall constitute a seasonal appointment. The applicant must meet the established minimum requirements for the position. Such appointments shall be subject to the prior approval of the commissioner.

Section 9. Detail to Special Duty. When the services of a permanent employee are needed in a position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the commissioner. For detail to special duty the commissioner may waive the minimum requirements when requested by the appointing authority in writing.

Section 10. Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes or in the best interest of the state service, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
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STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:080E. Layoffs.

RELATES TO: KRS 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A which govern layoffs. This regulation is necessary to comply with the statutory requirement.

Section 1. General Provisions. (1) Employees in the classified service may be laid off by reason of abolishment of position, lack of work or a material change in duties or orgainzation; or by reason of a projected or actual reduction in tax receipts as comtemplated by KRS 18A.1131 and 1132.

(2) It shall be unlawful to coerce employees who may be or are subject to layoff to resign or retire in lieu of layoff. Layoffs shall not be utilized as a method of dismissal.

(3) In the same cabinet, county and job classification, provisional, temporary, emergency, federally funded time-limited, and probationary employees shall be laid off before permanent full-time or permanent part-time employees with status. For purposes of layoff, probationary employee does not include an employee with status serving a promotional probatioary period. A cabinet shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.

(4) If two (2) or more employees subject to

layoff in a layoff plan submitted to the commissioner have the same qualifications, the employee with the lesser seniority shall be laid off first.

(5) An employee who has been laid off may appeal his layoff in accordance with 101 KAR 1:350E. The written notice to the employee shall include the reasons for the layoff, and shall advise him of his right to appeal. A copy of the appeal form shall be attached to the notice. The appointing authority shall conduct a personal interview with each laid-off employee to explain the re-employment rights available to that employee unless circumstances prevent such an interview; in which case such circumstances must be detailed in writing to the commissioner.

Section 2. Implementation of Layoff Plan. (1) A layoff of an employee due to the abolition of a position, lack of work or a material change in duties or organization shall comply with the provisions of this section.

(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the commissioner and the Secretary of the Finance and Administration Cabinet for their approval. Such plan shall contain the name of the employee, total months of state service for the employee and the reasons, in detail, for such layoff. Upon approval of the plan by the commissioner and the secretary, the employee shall be notified that he is subject to layoff, and of the reason for the layoff, the procedures established by the provisions of KRS Chapter 18A for the layoff of employees and the rights granted employees subject to layoff and to laid-off employees.

(3) An employee subject to layoff shall be transferred to a vacant position of the same pay grade and level of duties and responsibilities for which he is qualified within the cabinet. Such position shall be located in the same county as the position from which the employee is subject to layoff.

(a) If such a vacancy does not exist, the employee shall be transferred to a vacant position within the cabinet for which he is qualified. Such position shall be located in the same county as the position from which the employee is subject to layoff.

(b) If such a position is not available, the employee shall be notified of all vacant positions within the cabinet for which he is qualified to take an examination. The employee shall have the right to take an examination for any vacant position within the cabinet for which he is qualified. If he passes the examination he shall be appointed to that position before any applicant or eligible on a register, except another laid-off employee with greater seniority already on such register.

(4) If no position is available to an employee subject to layoff under the procedure established by subsection (3) of this section, the appointing authority shall notify the employee and the Department of Personnel. The Department of Personnel shall coordinate efforts to transfer an employee subject to layoff to another agency. It shall have the authority to transfer an employee subject to layoff under this section, with the approval of the appointing authority of the agency to which the employee is to be transferred.

(5) If no position is available to an employee subject to layoff under the procedure established by subsections (3) and (4) of section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

(6) An employee subject to layoff shall have the right to take an examination for any position for which he is qualified. If he passes the examination he shall be appointed before any applicant or eligible on a register, except a laid-off employee with greater seniority already on such register.

Section 3. Layoffs by Reason of a Projected or Actual Reduction in Tax Receipts. (1) Prior to a layoff required by a projected or actual reduction in tax receipts, each cabinet shall prepare a layoff plan.

(2) Each layoff plan shall provide that a layoff of state employees shall occur only after all other cost saving measures are taken have failed to alleviate the projected or actual deficit. These measures shall be specified in the plan, in detail, and shall include but not be limited to:

(a) A hiring freeze of all types of appointments;

(b) A reduction or delay or expenditures that would not prevent the provision of services required by law;

(c) Consolidaton of offices and job duties that would not prevent the provision of services required by law;

(d) Transfer of funds as provided by the budget reduction plan enacted pursuant to KRS Chapter 48;

(e) Transfer of funds appropriated for or allotted to vacant positions as provided by the budget reduction plan provided for by KRS 48.130, unless it is certified that the positions are essential and cannot be filled in the period during which layoffs are to occur by transfer of existing employees of the appointing authority;

(f) The filling of vacancies and promotions from within the cabinet; and

(g) Transfers of employees within the cabinet as provided by Section 2(3) and (4) of this regulation.

(3) Each cabinet shall submit its layoff plan and a list of employees who would remain subject to layoff after the implementation of cost saving measures to the commissioner and to the Secretary of the Finance and Administration Cabinet for review. Upon approval by the secretary, the layoff plans shall be submitted to the governor for approval.

(4) Upon approval of the plan by the governor, the commissioner shall attempt to transfer employees as provided by Section 2(4)(b) of this regulation. Employees who cannot be so transferred may be laid off.

(5) If no position is available to an employee subject to layoff under the procedures established by this section, the employee shall be notified in writing by the appointing authority that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:090E. Service regulations.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, which govern for the maintenance of employee records, the maintenance of other records and reports in the department, and for other conditions of employment. This regulation is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these regulations, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties.

Section 2. Attendance; Hours of Work. (1) The number of hours full-time employees in state offices in Frankfort are required to work shall be uniform for all positions unless specified otherwise by the appointing authority or the statutes.
(2) The normal work day shall be from 8:00 a.m. to 4:30 p.m., local time, Monday through Friday.
(3) An appointing authority may require and decide employees to work hours and work days other than normal including inclement weather schedules if it is in the best interest of the agency.
(4) Employees who work for agencies which require more than one (1) shift or seven (7) days a week operation may be assigned/reassigned from one shift to another and from one post to another or alternate days off by the agency to meet staffing requirements and/or to maintain security or provide essential services of the agency. The employee is required to give reasonable notice in advance of absence from a work station.

Section 3. Work Station. Each employee shall be assigned a work station by the appointing authority. A work station may be changed to better meet the needs of the agency. An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days, provided that such employee is reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority notifies the employee in writing prior to the effective date of the action.

Section 4. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the commissioner. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

Section 5. Minimum Hiring Age. The minimum age for hiring of state employees shall conform to federal and state labor laws, and administrative regulations.

Section 6. Maximum Hiring Age. (1) The maximum hiring age for permanent employment subject to these regulations is seventy (70).
(2) The appointing authority may request that individuals over seventy (70) be tested and/or employed. The request must be justified in writing by the appointing authority, stating the reasons why it serves the public interest, and must have the prior approval of the commissioner. Applicants so approved shall be certified only to those agencies requesting such waivers.

Section 7. Retirement. (1) The normal retirement age for employees subject to these regulations shall be seventy (70).
(2) Employees over seventy (70) may be allowed to continue employment from year to year with prior approval of the commissioner when it serves the public interest. Such requests must be justified in writing by the appointing authority.
(3) If an employee with status is retired, he is considered as separated without prejudice.

Section 8. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 9. Records and Reports. (1) The commissioner shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes as he may require. The commissioner shall inform the appointing authorities which personnel actions and status changes must be reported to him. The appointing authority shall provide a

copy of a personnel action form to the employee affected by such action.

(2) The commissioner shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or any other leave with or without pay. Such record shall be documentary evidence to support and justify authorized leave of absence with pay.

(3) The commissioner shall prepare and maintain a record of all employees showing for each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave, annual leave and compensatory leave.

Section 10. Department Records. (1) All records of the department shall be public records and open to public inspection as provided in KRS 61.870 to 64.884.

(2) A personnel file shall be maintained by the department and the appointing authority for each employee. The file maintained by the department shall be the official personnel file for the employee. Upon transfer, the personnel file maintained by the appointing authority from which the employee transfers shall be forwarded to the new appointing authority.

(3) Each file shall include, but not be limited to, for each employee, his name, address, title of positions held, classification, rates of compensation, all changes in status including evaluations, promotions, demotions, layoffs, transfers, disciplinary actions, commendations, awards, and preliminary and other supporting documentation for each action. Each file shall contain the complete record and supporting documentation for each personnel action.

(4) Upon written requrest, on forms prescribed by the commissioner, an employee shall have the right to examine his personnel file. An employee may comment in writing on any item in his file. Such comments shall be made a part of his file and shall be attached to the specific record or document to which they pertain.

(5) Upon written request, on forms prescribed by the commissioner, a state employee, an applicant for employment, and an eligible on a register shall have the right to inspect and to copy any record and preliminary documentation and other supporting documentation that relates to him except that an applicant, an eligible or a state employee shall not have the right to inspect or to copy any examination materials.

(6) No public agency, as defined by KRS 61.870, and no officer or employee shall deny, abridge or impede the exercise of the rights under this section.

(7) Applicants or employees shall be notified in writing within three (3) working days after receipt of a requrest for inspection of any reason the records requested are not available for inspection.

(8) A fee of ten (10) cents a page for copying or a charge equal to the actual cost of producing copies of records will be assessed in accordance with the regulatory provisions promulgated by the Finance and Administration Cabinet.

(9) Records may be inspected from 8 a.m. to 4:30 p.m., Monday through Friday each week except holidays.

THOMAS C. GREENWELL, Commissioner
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STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:100E. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

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

A full-time employee must have worked more than half of the work days in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted

in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

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

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

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

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for accumulated annual leave at the higher rate. The effective date of the separation shall be the last work day. A pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 2(2) of this regulation.

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

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is

credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no such position available, the regulations pertaining to layoff apply. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

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

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or re-employed shall have unused sick leave balances revived upon appointment and placed to their credit.

(11) In cases of absence due to illness or injury for which Workers' Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 4. Compensatory Leave. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

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

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off when practicable. To maintain a managable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "non-exempt" shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 6. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 7. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

Section 8. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:110E. Employee evaluation plan.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations for classified service employees to provide for uniform standards and methods of appraising work performance of all employees, and for the use of such methods of appraisal in personnel actions, and for the development and operation of programs to improve the work effectiveness of employees. This regulation implements such directives by establishing a uniform employee evaluation system.

Section 1. Eligible Employees. (1) Each full-time employee who has completed his initial probationary period of service; each part-time employee who works over 100 hours each month and who has completed his initial probationary period of service; each federally funded, time limited employee who has completed six (6) months service shall have his work performance evaluated on an annual basis, and be eligible for a lump sum performance award, using as a guide criteria developed by the commissioner.
(2) An appointing authority may elect to utilize the standards and methods of appraising work performance promulgated in this regulation for employees who are not eligible to receive a lump sum performance award.

Section 2. Work Performance Evaluation. (1) Each evaluator (the first line supervisor or the person with direct supervisory responsibility over the employee) shall assess employee performance in five (5) categories: job knowledge and skills; quality of work; productivity; improvement in performance; and employee conduct.
(2) Each category shall be assessed as: "exceeding performance requirements," "meeting performance requirements" or "failing to meet performance requirements."
(3) The overall rating shall be determined by the ratings on each of the five (5) job categories.
(4) "Exceeds requirements." The employee shall receive an "exceeds" rating when his job performance exceeds requirements in all five (5) of the job categories.
(5) "Fails to meet requirements." The employee shall receive a "fails to meet" rating when his job performance fails to meet requirements in all five (5) of the job caterogies. The evaluator shall provide the employee with suggestions for improvement and training, as needed.
(6) "Meets requirements." The employee who receives any other combination of ratings on the job categories shall receive an overall rating of "meets requirements."

Section 3. Procedures for Evaluation of Job Performance. (1) Identification of job duties. At the beginning of the evaluation period, the evaluator shall identify and review the job duties, factors to be evaluated and evaluation criteria with the employee and record the job description on the evaluation form.
(2) Mid-year evaluation. After six (6) months, the evaluator will assess the employee's job performance to date, assign a rating to each job category and determine the overall rating for the mid-year evaluation, discuss the employee's performance with him, and initiate corrective measures, as needed.
(3) Annual final evaluation. A final evaluation shall take place annually. After twelve (12) months, the evaluator shall assess the employee's job performance, considering the ratings given during the mid-year evaluation, assign a rating to each category, determine the overall rating for the year end, and discuss the employee's performance with him. The overall rating given at the twelve (12) month evaluation shall be the employer's FINAL rating of performance.
(4) When an employee receives two (2) successive final ratings of "fails to meet requirements," he shall be demoted to a position commensurate with his skills and abilities or dismissed.
(5) The evaluator of each employee shall be the first line supervisor (or the person with direct supervisory responsibility over the employee) provided that he has supervised the employee in the same position for a minimum of ninety (90) calendar days. If a supervisor has supervised the employee for at least ninety (90) calendar days and if he ceases to be the employee's supervisor after such period of time, he/she shall evaluate the employee at least five (5) working days prior to the day he ceases to be the employee's supervisor. If a supervisor ceases to be the supervisor of an employee due to the suspension, demotion or dismissal of the supervisor, the next line supervisor shall evaluate the employee of the supervisor who has left. If an employee transfers to a new job, he/she shall be evaluated by his/her prior supervisor if that supervisor supervised the employee no less than ninety (90) calendar days prior to notification of his/her transfer.
(6) All employees shall be evaluated during the same time period. All ratings shall be completed and the results submitted to the Department of Personnel as prescribed by the commissioner. Evaluators shall schedule evaluation conferences to allow twenty-five (25) working days for reconsideration, as needed.

Section 4. Request for Reconsideration. (1) Any employee may request reconsideration of his evaluation. Such a request shall only apply to the employee's FINAL RATING OF PERFORMANCE. In response to an employee's request, a reconsideration meeting of the employee and the evaluator shall be held. The meeting shall be scheduled no sooner than two (2) working days and no later than five (5) working days after the evaluation was first presented to the employee.
(2) If the employee does not agree with the rating following the reconsideration meeting, he may request further review of the evaluation by submitting a written request to the reviewer (second line supervisor) within five (5) working days following the reconsideration meeting.
(3) The reviewer (second line supervisor) shall either obtain a written statement from the evaluator and employee, or meet individually

with the evaluator and with the employee to discuss the rating. The reviewer shall inform the employee and the evaluator in writing of his determination within fifteen (15) working days from receipt of the request for review.

(4) In accordance with 101 KAR 1:350E, Section 10, an employee may appeal an evaluation to the Personnel Board within thirty (30) days after he has received the written decision of the second line supervisor, excluding the day the written decision was received.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:120E. Incentive programs.

RELATES TO: KRS 18A.110, 18A.202
PURSUANT TO: KRS Chapter 13A, 18A.202
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, to implement work related incentive programs for state employees. This regulation is necessary to comply with these statutory provisions.

Section 1. Employee Suggestion System. (1) Employees in the classified service may be recognized and rewarded for submitting suggestions that result in the improvement of state service or in the realization of financial savings by the state.

(2) An employee suggestion system council, which shall consist of designated cabinet or agency suggestion system coordinators and which shall be chaired by a designee of the commissioner, shall develop procedures to ensure proper evaluation of each suggestion, review and act upon, by approval or rejection, any suggestion presented to the council by a cabinet or agency, and review denials as set forth in Section 5 of this regulation. Only designated coordinators shall have the right to present recommended suggestions to the council and to vote on them. The employee suggestion system council may defer action on a suggestion in order to obtain additional information or may defer action up to one (1) year and one (1) month pending documentation of cash savings. The employee suggestion system council shall prepare an annual report to be submitted to the commissioner that shall include the number of suggestions received and the status of each suggestion. The council shall meet at a minimum on a quarterly basis or upon the request of the council chairman.

(3) Each cabinet secretary or agency head shall designate, in writing, the appointment of an employee suggestion system coordinator who shall also serve on the employee suggestion system council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions made by employees of his cabinet or agency and such suggestions that may be forwarded from other cabinet coordinators that affect his agency. The coordinator shall present suggestions recommended for approval by his cabinet or agency to the council for consideration.

Section 2. Eligibility. (1) A suggestion is a positive idea which explains how to improve methods, equipment or procedures; reduces time and/or cost of a work operation; creates a safer work environment; increases revenue; or improves relationships with or services to the public.

(2) The suggestion must present an improvement in state service or function and must explain how the change would be accomplished and what benefits would result to the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations. The suggestion shall be submitted on the form designated by the council and be accompanied by exhibits or illustrations as needed.

(a) Suggestions must be practicable, useful and constructive.

(b) A suggestion that requires legislative or regulatory changes for implementation may be submitted. However, it is the responsibility of the agency that desires to implement the suggestion to request the necessary legislative or regulatory changes. Upon appropriate legislative action or regulation changes, the suggestion may be considered for an award.

(3) The following suggestions are not eligible for a cash award:

(a) A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. Scope of duties shall be defined as a specific set of tasks as set forth in the position description of the suggester at the time the suggestion is submitted. Authority is defined as the power to implement the suggestion.

(b) Suggestions related to a particular problem given to an employee to solve within the scope of his duties and responsibilities.

(c) Suggestions falling within the scope of a special committee or task force to which an employee is assigned.

(d) Suggestions made by members of the council or a cabinet/agency suggestion review committee.

(e) Suggestions which include proposals to perform routine maintenance operations.

(f) Suggestions to make a change which has been documented as already under consideration by those administratively responsible.

(g) Suggestions which correct a condition that exists only because established procedures are not followed.

(4) If more than one (1) suggester makes

significant contributions to the idea, the suggestion may be submitted jointly with any award being divided equally between or among the suggesters.

(5) The first suggestion received takes precedence over all future suggestions having the same purpose. If two (2) or more suggestions deemed similar are received on the same day, any award granted will be divided equally between or among the suggesters.

(6) Suggestions shall be considered confidential communications among the suggesters and the employee and officers whose responsibility it is to process, investigate, review or evaluate suggestions.

Section 3. General Provisions. (1) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

(a) A method to notify the suggester, in writing, that the suggestion has been received, and to periodically notify the suggester, in writing, of the status of the suggestion.

(b) A method to document the original suggestion, evaluation and action taken.

(c) A method to prepare and present documentation of suggestions for recommendation to the employee suggestion system council.

(2) Eligibility of a suggestion shall be evaluated according to the circumstances existing at the time the suggestion was made. An evaluation shall be completed by a person with expertise in the area under consideration. The results of the evaluation shall be recorded on the form designated by the council, and the form shall be dated and signed by the individual making the evaluation.

(3) Suggesters shall be notified in writing of the disposition of their suggestion within ninety-five (95) calendar days of receipt by the coordinator. If all parties involved agree, an extension of time may be granted when extenuating circumstances exist.

(a) A suggestion shall be considered to be active and eligible for an award until the suggester is notified, in writing, that the suggestion has been approved or denied.

(b) When it is determined that a suggestion will not be implemented, the coordinator shall notify the suggester, in writing, stating the reason it was not implemented.

(c) When an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request re-evaluation by the cabinet or agency. Such request shall be in writing and shall be received by the agency within one (1) year from the date of rejection. The request shall be accompanied by information of the change of circumstances.

(4) When a suggestion is determined to be of benefit as set forth in Section 2(1) of this regulation, the cabinet coordinator shall recommend approval of the suggestion to the council.

(a) The recommendation shall contain:

1. The suggestion as completed by the suggester on the form designated by the council;

2. The evaluation forms completed according to the criteria as set forth in this regulation; and

3. A statement of actual or projected cost savings using generally accepted accounting principles.

(b) The chairman of the council shall send written notification to the cabinet coordinator of the council's action.

(c) Upon receipt of the council's decision, the coordinator shall notify the employee, in writing, of the decision.

(d) When an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.

(5) Award of cash payment shall be in accordance with KRS 18A.202.

(a) The calculation of cash payment represents the amount saved over the period of one (1) year, less implementation costs, to be determined according to generally accepted accounting principles.

(b) The award check shall be issued by the agency where the suggester is employed. Funds for payment shall come from the agency or agencies implementing the suggestion. The agency issuing the check may inter-account other agencies implementing the suggestion for a proportionate share of the total amount of the award.

(c) When a suggestion is made promoting financial savings to the state for which proper documentation of cost savings has not yet been obtained, the council may request that each agency implementing the suggestion maintain records documenting the cost savings for a period not to exceed one (1) year from the date of implementation. Documentation shall be carried out according to generally accepted accounting principles and shall be forwarded within thirty (30) work days of completion by the coordinator to the chairman of the council.

(6) When an employee suggestion has been approved by the council and has resulted in a financial savings to the state, the employee who submitted the suggestion shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of $100, and with a maximum of $2,500. When an employee suggestion has been approved by the council and has resulted in an intangible improvement in state service, the employee shall be compensated in the amount of $100. Upon employee's receipt of compensation, the suggestion becomes the property of the state.

Section 4. Reconsideration. (1) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of disapproval is received by the employee.

(2) The suggester shall request reconsideration, in writing, and shall set forth the basis for the request. The request shall be filed with the coordinator within the aforementioned ten (10) day period. When the tenth day falls on a day that the cabinet or agency office is closed during normal work hours, the request may be filed on the next work day.

(3) The cabinet or agency shall act on the request for reconsideration within thirty (30) work days and respond to the employee, in writing, setting forth the reason for the decision.

Section 5. Council Review. (1) When a suggestion has been reconsidered and denied by

the cabinet or agency, the suggester may request a review by the council. The suggester may request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth, in writing, the basis for his request. The request shall be filed in the office of the employee suggestion system chairman within the aforementioned thirty (30) day period. When the thirtieth day falls on a day that the chairman's office is closed during normal work hours, the request may be filed on the next work day.

(2) The council shall complete the review within ninety (90) days of the date that the request for review is received by the chairman.

(3) The chairman of the council shall notify the agency head of the findings of the council's review and its recommendation concerning the suggestion to be implemented or denied.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:130E. Political activity.

RELATES TO: KRS 18A.140
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.040, 18A.075, 18A.110
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.140 prohibits certain political activities by classified employees. KRS 18A.030 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A and federal standards for the administration of a personnel system. KRS 18A.040 requires compliance with federal merit system standards. KRS 18A.110 provides that administrative regulations promulgated by the commissioner may include such administrative regulations not inconsistent with KRS Chapter 18A as may be proper and necessary for its enforcement. This regulation is to implement the statutory provision and to provide uniform guidance to all classified employees concerning political activity.

Section 1. Permitted Activities. Permitted political activities include the following:

(1) Registration and voting. Classified employees may register and vote in any election.

(2) Expression of opinions. Classified employees may privately express their opinions on all political subjects and candidates, but they may not take an active part in political management and in political campaigns.

(3) Contributions. Classified employees may make voluntary cash contributions to political parties, candidates or organizations; provided, however, it shall be unlawful for classified employees to make contributions of goods, labor and services.

(4) Membership in political clubs. Classified employees may join a political club and attend its meetings but may not hold office or serve on committees of the club.

(5) Attendance at political rallies, conventions, etc. Classified employees may attend political rallies and conventions, may participate in the selection of committeemen and committeewomen, and may vote at the lowest level of the selection process for delegates to the party conventions.

(6) Political pictures and signs. Classified employees may voluntarily display political pictures or signs on their property.

(7) Badges, buttons, and stickers. Classified employees may wear political badges or buttons and voluntarily display political stickers on their private automobiles; provided, however, that no political buttons, badges or other such designations may be worn by any classified employee of the Commonwealth while the employee is on official duty or while such employee is conducting official business for the Commonwealth.

(8) Precinct election officers - polls. Classified employees may serve as non-partisan precinct election officers at the polls.

(9) Constitutional amendments, referendums, etc. Classified employees may work actively for or against constitutional amendments, referendums, municipal ordinances and other questions of non-partisan nature.

(10) Transporting voters. Classified employees while on their own time may drive friends or relatives to the polls as a civic gesture, but may not transport voters to the polls as an organized service to a political party, faction, or candidate.

Section 2. Prohibited Political Activities. Prohibited political activities, whether the employee is on or off duty, include but are not limited to the following:

(1) Political party involvement. A classified employee is prohibited from serving on or for any political committee, party, or other similar organization, or serving as a delegate or alternate to a caucus or party convention, but may vote in the selection of delegates to a party convention and in the selection of precinct committeemen and committeewomen.

(2) Political contributions. A classified employee is prohibited from soliciting or handling political contributions.

(3) Political party tickets. A classified employee is prohibited from soliciting the sale of or selling political party, faction, or candidate items or tickets, but a classified employee may voluntarily purchase such items or tickets.

(4) Political club involvement. A classified employee is prohibited from serving as an officer of a political club, as a member or officer of any of its committees, of addressing such a club on any partisan political matters,

or of being active in organizing it.

(5) Political meetings and rallies. A classified employee is prohibited from serving in connection with preparation for, organizing or conducting a political meeting or rally or addressing such a meeting on any partisan political matter or taking any other active part therein except to vote.

(6) Partisan activity at election polls. A classified employee is prohibited from engaging in partisan activity at the polls (at primary or regular elections) in the position of checker, challenger, or watcher, or in soliciting votes and assisting voters to mark ballots.

(7) Candidacy for office. A classified employee is prohibited from becoming a candidate for nomination or election to any office, federal, state, county, or municipal, which is to be filled in an election in which party candidates are involved or for which compensation is paid (other than a per diem); or from soliciting others to become candidates for nomination or election to such offices.

(8) Campaign literature distribution. A classified employee is prohibited from distributing campaign literature or material.

(9) Nominating petitions. A classified employee is prohibited from initiating or circulating partisan political nominating petitions.

(10) Solicitation of political support. A classified employee is prohibited from canvasing a district or soliciting political support for a party, faction, or candidate, either in person or in writing.

Section 3. Posting of Regulation. Each appointing authority shall post, in a form prescribed by the commissioner, a copy or copies of KRS 18A.140 and this regulation in a central area accessible to all classified employees of that cabinet, department or agency.

Section 4. Copy of Regulation to Employees. Each appointing authority shall furnish a copy of KRS 18A.140 and this regulation in a form prescribed by the commissioner to each employee and require them to sign an acknowledgment of receipt which shall then be placed in the employee's personnel folder.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 3:005E. Repeal of previous regulations.

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.155 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 1:200, Rules for unclassified service; 101 KAR 1:205, Employee evaluation plan, unclassified; 101 KAR 1:210, Appeal for employees in the unclassified service; 101 KAR 1:220, Unclassified service, classification and compensation plans; and 101 KAR 1:230, Unclassified service, promotions, transfers and disciplinary actions.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 3:010E. Leave regulations for unclassified service.

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.155(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. In practice, the leave regulations (101 KAR 2:100E) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, or each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

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

A full-time employee must have worked more than half of the work days in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

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

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

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

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for accumulated annual leave at the higher rate. The effective date of the separation shall be the last work day. A pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 1(2) of this regulation.

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

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave

upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

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

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation; layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or re-employed shall have unused sick leave balances revived upon appointment and placed to their credit.

(11) In cases of absence due to illness or injury for which Workers' Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties during

his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 4. Compensatory Leave and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

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

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency. To maintain a managable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "non-exempt" shall be paid at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7)(a) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(b) An employee in a policy making position shall be paid for all accured compensatory leave, not to exceed 200 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for his compensatory leave at the higher rate.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 6. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 7. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service, or for other purposes that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave

without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.

Section 8. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 3:030E. Appeals for employees in the unclassified service.

RELATES TO: KRS 18A.095, 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.095, 18A.155
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. KRS 18A.095 grants the right of appeal to the Personnel Board to those unclassified employees who are dismissed, demoted, suspended, or otherwise penalized for cause. This regulation complies with and implements these statutory provisions.

Section 1. Unclassified Employees Right to Appeal. Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after such dismissal, demotion, suspension, or other form of penalization, appeal to the Personnel Board for review thereof.

Section 2. Appeal Procedures for Unclassified Employees. Appeals to the Personnel Board pursuant to KRS 18A.095 and Section 1 of this regulation shall be in accordance with KRS 18A.095 and 101 KAR 1:350E, Section 15.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 3:040E. Unclassified service; classification and compensation plans.

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision.

Section 1. Classification Plan. (1) The commissioner shall, after consultation with the appointing authorities, prepare and recommend to the Governor a classification plan for adoption. The plan shall be based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Each position shall be allocated to its proper class in the classification plan after consultation with appointing authorities. The classification plan shall include for each class of position an appropriate title, description of duties and responsibilities, and the required education, experience and other

qualifications.
(2) The principles and provisions of 101 KAR 2:020E shall apply to positions in the unclassified service.

Section 2. Compensation Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, develop a pay plan for all aforementioned employees in the unclassified service, taking into account such factors as:
(a) The relative levels of duties and responsibilities of various classes of positions;
(b) Rates paid for comparable positions elsewhere; and
(c) The state's financial resources.
Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner through the Secretary of the Department of Finance. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed.
(2) With the exception of the provision relating to probationary increments, the principles and provisions of 101 KAR 2:030E shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.
(3) Salary adjustments.
(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.
(b) Subject to approval by the commissioner, an appointing authority may request a salary adjustment not to exceed ten (10) percent when standards of internal equity justify such an adjustment.
(c) Inasmuch as the appointing authority has the option of not providing salary increases under this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.
(4) Physicians, employed as such and pursuant to KRS 64.655, are exempted from the provisions of 101 KAR 2:030E, Section 2, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Department of Personnel in accordance with KRS Chapter 18A and Senate Bill 340, enacted by the 1986 General Assembly, the Department of Personnel needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner

DEPARTMENT OF PERSONNEL

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

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision.

Section 1. Promotion. (1) Vacancies may be filled by promotion whenever practicable and in the best interest of the service. Employees in executive policy-making positions serve at the pleasure of the appointing authority.
(2) A promotion is the filling of a vacancy by the advancement of an employee from a position having a lower minimum salary. Promotion to an executive policy-making position requires prior written approval of the Governor in accordance with KRS 12.050.
(3) Any career employee promoted from a classified to an unclassified position retains his status in the classified service. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080E, Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to KRS 18A.130 and 18A.135.
(4) An employee's promotion to a different agency must be approved by the appointing authority and the commissioner.

Section 2. Transfer. (1) The movement of an employee from one position to another of the same grade having the same salary ranges and the same level of responsibility shall be deemed a transfer. An employee appointed in accordance with KRS 12.050 cannot be transferred. A transfer may be an inter-agency or intra-agency

action. An appointing authority, with written notice, may transfer an employee from one position to another in the unclassified service. An employee may request a transfer. The employee must meet the minimum requirements of the job class to which transferred.

(2) An employee may be transferred between agencies to a position having the same salary range and level of responsibility, with the approval of the commissioner.

Section 3. Demotion. (1) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility.

(2) An employee may be demoted by the appointing authority with the approval of the Commissioner of Personnel. If the demotion is for cause, the employee may appeal to the Personnel Board pursuant to 101 KAR 1:350E, Section 15 or KRS 18A.095(9).

(3) If, for personal or other reasons, an employee requests in writing that he be assigned to a position of a lower class, the appointing authority may make such a voluntary demotion. Involuntary demotions shall be intra-agency only.

Section 4. Detail to Special Duty. When the services of a permanent employee are needed in a position within the agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with approval of the Commissioner of Personnel. For detail to special duty the Commissioner of Personnel may waive the minimum requirements when requested by the appointing authority in writing.

Section 5. Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

Section 6. Separations and Disciplinary Actions. (1) General provisions. Except as otherwise provided in these regulations, the tenure of an employee shall be during good behavior and the satisfactory performance of his duties.

(2) Layoffs. An appointing authority may lay off an employee whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. The employee shall be notified of the effective date at least fourteen (14) calendar days prior to such effective date and shall be given written notice of the reasons for the layoff. An career employee who has been promoted from the classified service to the unclassified service must be reverted to the classified service in order to be considered for layoff. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080E, Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to re-employment procedures and KRS 18A.130 and 18A.135.

(3) Dismissals. The appointing authority, upon written notice, may remove an employee for cause, or without cause. If the dismissal is for cause, the employee may appeal to the Personnel Board pursuant to 101 KAR 1:350E, Section 15, and the appointing authority must notify the employee in writing of the reasons for the dismissal and of the employee's right to appeal. An career employee who has been promoted from the classified service to the unclassified service and who is dismissed from the unclassified service without cause shall revert to the classified service. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080E, Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to re-employment procedures and KRS 18A.130 and 18A.135.

(4) Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

(5) Retirement. If an employee is retired, he is considered as separated without prejudice.

(6) Suspension. An appointing authority, upon written notice stating the reasons therefor, a copy of which shall be sent to the commissioner, may suspend an employee without pay or other compensation as punishment for disciplinary cause. Such a suspension shall not exceed thirty (30) working days during any twelve (12) month period. The twelve (12) month period begins with the first day of the suspension. An employee suspended for cause may appeal to the Personnel Board pursuant to 101 KAR 1:350E, Section 15, and the appointing authority must notify the employee in writing of the employee's right to appeal.

(7) Disciplinary fines. An appointing authority may impose, as a disciplinary measure, a fine to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days' pay for each occurrence, and may not exceed a total of thirty (30) days' pay in any twelve (12) month period. The employee shall be notified in writing by the appointing authority of the reasons for the action, a copy of which shall be sent to the commissioner. An employee receiving a disciplinary fine for cause may appeal to the Personnel Board pursuant to 101 KAR 1:350E, Section 15, and the appointing authority must notify the employee in writing of the employee's right to appeal.

(8) Written reprimands. An appointing authority may give an employee a written reprimand as a preliminary disciplinary measure. A copy of the written reprimand shall be placed in the employee's personnel file in the agency and a copy shall be given to the employee,

Department of Personnel and Personnel Board. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 8 a.m.

STATEMENT OF EMERGENCY

The amendment of 302 KAR 16:010 is necessary to aid the Department in the implementation of recent changes in KRS 247.232 through KRS 247.236 which became effective as emergency legislation. Emergency regulations are needed as it will take ordinary regulations too long to become effective. This emergency regulation will be replaced by an ordinary regulation.

MARTHA LAYNE COLLINS, Governor
DAVID E. BOSWELL, Commissioner

DEPARTMENT OF AGRICULTURE

302 KAR 16:010E. Procedure for obtaining a permit for operating amusement rides or attractions.

RELATES TO: KRS 247.232, 247.234
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
EFFECTIVE: July 1, 1986
NECESSITY AND FUNCTION: To establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky.

Section 1. Before operating any amusement ride or attraction in this state the owner or operator of such ride or attraction shall provide to the commissioner a written itinerary showing the location of the first set-up as well as the balance of the Kentucky itinerary as known on the date of notification. Such itinerary shall include the playing dates and location; including street and address number where the set-up is within a city or town. The itinerary shall also include the operating period at each site and shall be delivered to the commissioner at least fourteen (14) days prior to the first scheduled set-up.

Section 2. The itinerary set forth in Section 1 of this regulation shall be updated and submitted to the commissioner when cancellations or additional locations are added to the itinerary in Kentucky for the period covered by the permit.

Section 3. On or before the date of the initial inspection of the calendar year the applicant shall provide proof of liability insurance on each ride or attraction in the amount of $300,000 [$1,000,000] due to all bodily injuries or deaths per occurrence. Such proof of insurance must also provide that the insurer will not cancel such policy without thirty (30) days written notice to the commissioner. Proof of insurance may be either the policy itself or a certified statement issued by the insurer attesting to the above requirements. The proof of insurance shall include a listing of the rides or attractions insured or a statement to the effect that all rides or attractions operated under the supervision of the insured are covered.

Section 4. In lieu of providing proof of liability insurance as set forth in Section 3 of this regulation, if the applicant's amusement ride or amusement attraction is one that is permanently located or erected on a site in this state, such applicant may have the option to provide proof of financial responsibility in the sum of $100,000 on or before the date of the initial inspection of the calendar year. "Proof of financial responsibility" shall only be given in the following manner:

(1) By providing proof of liability insurance of $100,000 due to all bodily injuries or death per occurrence in the same manner as set forth in Section 3 of this regulation; or

(2) By submitting a financial statement, certified after audit by a licensed certified public accountant that shall be dated no more than thirty (30) days prior to the receipt of the application and permit fee which shall evidence a net worth of $100,000 or more in assets located in this state; or

(3) By obtaining a bond with surety for $100,000 which names the department, or an individual or institution approved by the department, as trustee; or

(4) By tendering an irrevocable general letter of credit to the department in the sum of $100,000; or

(5) By other proof of financial responsibility in the amount of $100,000 on information provided by the permittee and whose accuracy is sworn to on forms provided by the department.

Section 5. [4.] Each owner or operator of an amusement ride or attraction shall submit to the commissioner or his designated representative an application to be provided by the commissioner. A twenty-five (25) dollar permit fee for each ride or attraction shall accompany the application for a permit. Said permit shall not be issued until each ride or attraction has been inspected and found to be in compliance with KRS 247.232 through 247.236 and applicable regulations. To assure continued safety of amusement rides or attractions, and in addition to the initial inspection provided for pursuant to KRS 247.234 through 247.236, periodic safety inspections may be conducted at various times throughout the term of the permit according to the playing locations as listed in the itinerary.

Section 6. [5.] Upon receipt of proper application and permit fee and upon completion of satisfactory inspection as set forth in Sections 1, 2, 3, [and] 4, and 5 of this regulation the commissoner shall issue a permit in the name of the applicant. Accompanying such permit shall be a seal. The Department Safety Inspector shall affix this seal to a permanent and accessible section of the ride or attraction for which such permit was issued.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: June 27, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.

STATEMENT OF EMERGENCY

In order to continue to operate the Kentucky State Penitentiary in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policy must be revised to immediately bring it into compliance with cabinet level policy changes regarding the manner in which searches of inmates, visitors and employees are conducted. Additionally, immediate policy revision is required to the inmate legal services policy which was revised through the formalized inmate changes made through the inmate grievance procedure be implemented within a stipulated time frame; which in this case is not more than thirty (30) days. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
GEORGE W. WILSON, Secretary

CORRECTIONS CABINET

501 KAR 6:040E. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: June 16, 1986
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on June 13 [May 15], 1986 and hereinafter should be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-01	General Guidelines for KSP Employees
KSP 020000-02	Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave
KSP 020000-03	Work Planning and Performance Review (WPPR)
KSP 020000-04	Employee Disciplinary Procedure
KSP 020000-05	Proper Dress for Uniformed and Non-Uniformed Personnel
KSP 020000-06	Employee Grievance Procedure
KSP 020000-07	Personnel Registers and Advertisements
KSP 020000-09	Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files
KSP 020000-10	Overtime Policy
KSP 020000-15	Legal Assistance
KSP 020000-20	Equal Employment Opportunity Complaints
KSP 020000-23	Recruitment and Employment of Ex-Offenders
KSP 020000-24	Educational Assistance Program
KSP 020000-29	Promotional Opportunity Announcement Program
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment
KSP 030000-05	Inmate Personal Funds
KSP 030000-06	Inmate Commissary Program
KSP 040000-02	Inmate Records Section (Amended 6/13/86)
KSP 040000-08	Inmate Equal Opportunity Policy
KSP 050000-14	Searches of Inmates, Visitors, Staff, Vehicles, Cells and Area Shakedown and Preservation of Evidence (Amended 6/13/86)
KSP 060000-01	Special Security Unit
KSP 060000-02	Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units
KSP 060000-04	Protective Custody Unit
KSP 060000-11	Criteria for Disciplinary Segregation and Incentive Time Reduction Program
KSP 060000-12	Maximum Protective Custody
KSP 070000-01	Hospital Services
KSP 070000-02	Sick Call
KSP 070000-03	Health Evaluations
KSP 070000-04	Consultations
KSP 070000-05	Emergency Medical Procedure
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs
KSP 090000-03	Correctional Industries
KSP 100000-02	Visiting Program (Amended 6/13/86)
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-04	Inmate Grooming and Dress Code
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Mail
KSP 100000-07	Inmate Telephone Access
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures
KSP 100000-11	Authorized and Unauthorized Property for Inmates (Amended 5/15/86)
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Standards for Fire Safety, Sanitation and Security of all Cells
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program (Amended 6/13/86)
KSP 100000-21	Photocopies for Non-Indigent Inmates with Special Court Deadlines

KSP 100000-22	Special Management Unit Legal Services Program (Amended 5/15/86)
KSP 100000-23	Inmate Legal Office/Legal Library (Added 5/15/86)
KSP 100000-24	Resident Legal Services Office Library (Deleted 5/15/86)
KSP 100000-25	WKFC Resident - Access to Kentucky State Penitentiary Legal Library (Deleted 5/15/86)
KSP 110000-03	Governor's Meritorious Good Time Award Committee
KSP 110000-04	Pre-Parole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time (Amended 5/15/86)
KSP 110000-10	Special Needs Inmates
KSP 110000-11	Classification Committee - Transfer Requests
KSP 110000-12	Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-19	Custody/Security Guidelines
KSP 120000-04	Academic Education
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-24	Muslim Services
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: June 13, 1986
FILED WITH LRC: June 16, 1986 at 2 p.m.

STATEMENT OF EMERGENCY

In order to continue to operate the Kentucky Correctional Institution for Women in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policy must be revised to immediately bring it into compliance with cabinet level policy changes regarding the manner in which searches of visitors to the institution are conducted. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
GEORGE W. WILSON, Secretary

CORRECTIONS CABINET

501 KAR 6:070E. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: June 16, 1986
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on June 13 [April 14], 1986 and hereinafter should be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Non-Expendable Personal Property
KCIW 02-03-03	Criteria for Selection of Bidders and Vendors
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen/Staff Canteen
KCIW 02-07-01	Release of C.E.T.A. Money Earned
KCIW 03-01-01	Travel Expense Reimbursement
KCIW 03-02-01	General Orders for Staff
KCIW 03-02-02	Inclement Weather and Emergency Conditions
KCIW 03-03-01	Employee Grievance Procedure
KCIW 03-05-01	Employee Personnel File
KCIW 03-06-01	Affirmative Action and the Equal Employment Opportunity Complaint Procedure
KCIW 03-08-01	Employee Performance Evaluations
KCIW 03-09-01	Payroll and Personnel Manning Records
KCIW 03-10-01	Promotion Committee
KCIW 03-11-01	Personnel Registers
KCIW 03-12-01	Criminal History Checks on all Personnel and the Recruitment and Employment of Ex-Offenders
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Operations Manager
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Standards, Regulations for Food Service Workers
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry Facilities/Clothing Issuance
KCIW 12-02-03	Donated Items

KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 13-01-01	Provision of Medical and Dental Care
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-03-03	Outside Hospital Security
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Exams for New Employees
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-01-01	Offenses and Penalties
KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Incentive Levels System
KCIW 16-01-01	Inmate Correspondence
KCIW 16-01-02	Inmate Mail Distribution
KCIW 16-01-03	Staff Mail
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting Regulations (Amended 6/13/86)
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Vendor Packages, Appliance Orders and Drug Store Orders
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 17-05-01	Inmate Personal Property
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Up-grade Programs and Release Preparation Program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Pre-Parole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Leave into the Community

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: June 13, 1986
FILED WITH LRC: June 16, 1986 at 2 p.m.

STATEMENT OF EMERGENCY

In order to continue to operate the Roederer Farm Center in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policy must be implemented immediately to allow for the establishment of an institutional policy and procedures manual as required by our national accrediting agency, the Commission on Accreditation for Corrections. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
GEORGE W. WILSON, Secretary

CORRECTIONS CABINET

501 KAR 6:110E. Roederer Farm Center.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: June 16, 1986
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on June 13, 1986 and hereinafter should be referred to as Roederer Farm Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

RFC 01-08-01	Public Information and News Media Access
RFC 01-10-01	RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies
RFC 01-06-01	Inmate Access to and Communication with RFC Staff
RFC 01-07-01	Institutional Legal Assistance
RFC 01-09-01	Staff Participation in Professional Organization and

	Conferences; Provisions for Leave and Reimbursement for Expenses
RFC 01-12-01	Institutional Duty Officer - Responsibilities
RFC 02-01-01	Fiscal Management: Organization
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RFC 04-01-01	Employee Training and Development
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RFC 11-01-01	Food Services: General Guidelines
RFC 11-02-01	Food Service: Security
RFC 11-03-01	Dining Room Guidelines
RFC 11-04-01	Food Service: Meals
RFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
RFC 11-05-01	Food Service: Kitchen and Dining Room Inmate Work Responsibilities
RFC 11-05-02	Medical Screening of Food Handlers
RFC 11-06-01	Food Service: Inspections and Sanitation
RFC 11-07-01	Food Service: Purchasing, Storage and Farm Products
RFC 14-01-01	Inmate Rights and Responsibilities
RFC 14-02-01	Legal Services Program
RFC 14-03-01	Inmate Grievance Procedure
RFC 14-04-01	Inmate Participation in Authorized Research
RFC 16-02-01	Telephone Communications
RFC 16-03-02	Christmas Packages
RFC 17-01-01	Assessment/Orientation Procedure
RFC 17-02-01	Inmate Reception Process
RFC 17-03-01	Inmate Personal Property and Property Control
RFC 17-04-01	Unauthorized Items
RFC 17-05-01	Inmate Canteen
RFC 21-01-01	Library Services
RFC 22-01-02	Recreational Equipment Check-in/Check-out Procedure
RFC 22-02-01	Outside Recreation
RFC 22-02-02	Entry/Exit Procedure for Inmate Outside Recreation
RFC 22-03-01	Inmate Clubs and Organizations
RFC 22-03-02	Privilege Trips
RFC 22-04-01	Conducting Inmate Organizational Meetings and Programs
RFC 22-05-01	Woodworking Shop
RFC 22-06-01	Playing Cards
RFC 23-01-01	Religious Services
RFC 23-02-01	Security Procedures for the Chapel
RFC 23-03-01	Visitors for Religious Programs
RFC 23-04-01	Marriage of Inmates
RFC 24-01-01	Social Services and Counseling Program

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: June 13, 1986
FILED WITH LRC: June 16, 1986 at 2 p.m.

STATEMENT OF EMERGENCY

House Bill 126 was enacted by the 1986 General Assembly. Section 6, which amends KRS 138.695, is effective July 1, 1986. This emergency administrative regulation amends that portion of an existing administrative regulation dealing with motor carrier tax credits. Since there could be confusion over the amount of tax credit a motor carrier could be entitled to, it is necessary that this emergency regulation be effective at the same time as Section 6 of House Bill 126. A proposed amended administrative regulation will be filed in accordance with the requirements of KRS Chapter 13A as soon as possible.

MARTHA LAYNE COLLINS, Governor
C. LESLIE DAWSON, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 9:074E. Kentucky highway use license, records and taxes.

RELATES TO: KRS 138.655 to 138.725
PURSUANT TO: KRS 138.725
EFFECTIVE: July 1, 1986
NECESSITY AND FUNCTION: KRS 138.725 makes the Department of Vehicle Regulation responsible for the application of the Kentucky motor carrier fuel use tax and weight distance tax to motor carriers covered by KRS 138.655 to 138.725. This regulation provides procedures for licensees to follow in order to comply with the statutes.

Section 1. Application for Kentucky Highway Use License. Every motor carrier as defined in KRS 138.655(5) shall apply for and obtain on a department approved form a license before using or continuing to use the public highways in the state. The department shall issue a KYU license number to each qualified motor carrier, and the department [carrier] shall cause said license number to be displayed on each [a] motor vehicle identification card issued by it [by the department]. [The card shall be carried in each vehicle operated by the carrier at all times.]

Section 2. Bonds-Cash Deposit. (1) Every motor carrier and heavy equipment motor carrier, pursuant to the provisions of KRS 138.655 to 138.725 [and 138.670] shall file with the department at the time of application for a license a corporate bond, cash bond, or security

approved by the department. The applicant for the license shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee. The bond will be conditioned as required in KRS 138.670, and the department shall administer the bond as provided in KRS 138.670.

(2) In addition to the bond imposed in subsection (1) of this section, if it appears that a person, firm, or corporation, which has been issued a transportaion plan involving the reporting and payment of tonnage taxes, has no assets in Kentucky, or has been involved in bankruptcy proceedings within seven (7) years past, or, is of doubtful financial stability, the department may require such person, firm, or corporation, to post a corporate surety bond, with a surety authorized to transact business in Kentucky, or a cash bond, equal to one (1) quarter's anticipated tonnage tax liability, as a condition precedent to the implementation and conduct of operations under the transportation plan issued to such person, firm, or corporation. The bond shall be in such form and amount as the cabinet shall prescribe and the cabinet shall administer the bond as provided in KRS 138.670.

Section 3. Registration for Highway Use Tax. (1) For the purpose of this section registration shall mean the registration of the licensee for the purpose of a tax imposed by KRS 138.660 and shall be required of all motor carriers as defined in KRS 138.655(5). The current registration period shall be deemed that quarterly period for which the tax [is due] under KRS 138.660 is due or required to be reported on the quarterly return. The applicant for the license shall apply to the department for a motor vehicle identification card on forms prescribed and furnished by the department. [The completion by the applicant and submittal to the department for validation shall be necessary prior to the authority of the applicant to operate a motor vehicle on the public highways of Kentucky.] A motor carrier identification card shall be issued which contains the name and address of the owner or operator, the identification of the vehicle, and such other information as may be requested, including, but without limitation, the KYU license number issued to the applicant for the use of the public highways of Kentucky. The identification card shall show the vehicle combined license weight or the actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined hereinabove.

(2) Definitions.

(a) "Combined license weight" shall mean the declared combined maximum gross weight of the vehicle and any towed unit for the registration purposes for the current registration period as defined hereinabove; or the highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined herein.

(b) "Declared gross weight" shall mean the same as paragraph (a) of this subsection.

(c) "Gross weight" shall mean the unloaded weight of the vehicle plus the maximum load to be carried by it on the highways of the Commonwealth of Kentucky.

(3) The identification card shall be displayed in the cab of the vehicle at all times. Failure to display the identification card shall constitute a violation of KRS 138.665.

Section 4. Communications, Business Names and License Address. All licensees must immediately report any change in principal business address, legal status or business name to the department. All motor carrier operations must be conducted in the name in which the license and the identification card is issued or the duly assumed business name of the licensee, as it appears on the license. All licensees are required to use the name utilized in the application for the license in all documents relating to their operations and in all correspondence with the department. All correspondence with the department shall be addressed as follows: Kentucky Department of Vehicle Regulation, Division of Motor Carriers, Post Office Box 2007, Frankfort, Kentucky 40602.

Section 5. Instruments Filed Become Permanent Records. All bonds filed with the department as required by statute are permanent records and cannot be returned to licensee or removed from the custody of the department as long as the licensee is subject to the Kentucky Statutes.

Section 6. Kentucky Highway Use License for Leased Vehicles. (1) Any person leasing or renting a commercial motor vehicle to a lessee who is engaged in private carriage, where the operator of such vehicle is required to have a Kentucky Highway Use License may obtain the license by making application to the department and complying with the appropriate administrative [rules and] regulations. The licensee shall entitle the lessee to operate the leased or rented vehicle under the lessor's license.

(2) The lease shall be carried in the vehicle and the required motor vehicle identification [cab] card shall be in the lessor's name and the lessor shall make the required quarterly reports and pay all taxes which may become due by virtue of the operation of the motor vehicle.

(3) A [motor vehicle which is leased to a] certificated carrier leasing a motor vehicle will be required to have the Kentucky Highway Use License and the lessee shall be responsible for the payment of any tax which may become due.

(4) A lessor of motor vehicle equipment who makes an application for a license under this section shall furnish the department a copy of the standard lease or rental agreement as well as the address of the place of business where the lessor's records are maintained. A current list of all lessees who lease equipment from the lessor and who will use the lessor's Kentucky Highway Use License shall be filed with the department. This list shall contain the name of the lessee, the lessee's address, the number of vehicles leased to each lessee and other pertinent information which the department may require. The list required herein shall be updated and kept current on a semi-annual basis by the lessor.

Section 7. Authorized Deductions on Quarterly Returns. Every person licensed as a motor carrier may deduct on his quarterly tax return the amount of tax paid on fuel at the time of purchase, provided the purchase is made in

Kentucky and the Kentucky motor fuel tax has been paid. The tax credits, and tax refunds, authorized by KRS 138.695 to be granted to a taxpayer eligible therefor shall not exceed in amount the actual amount of the subject taxes paid by said taxpayer, exclusive of any applicable interest thereon due the taxpayer by operation of law. A valid receipt must be obtained as evidence of purchase from the person making the sale or delivery.

(1) To be a [The] valid receipt [is] one (1) must meet the following criteria [which]:

(a) The purchase receipt shall be the original prepared by a station or vendor located in the state of Kentucky and shall have an imprinted Kentucky address. Receipts that have an imprinted Kentucky address, but include other station locations outside of Kentucky are invalid.

(b) The following is included on the receipt:

1. Name and station location of the vendor;
2. Date of purchase;
3. Number of gallons purchased;
4. Type of fuel purchased;
5. Company unit number of vehicle or registration number of unit; and
6. Licensee's name.

(c) The name and address of the vendor shall be preprinted or imprinted, which includes, but is not restricted to, credit card machines. Station receipts that are identified only by impressed rubber stamp markers or handwritten are not valid.

(2) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same information as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

(3) Bulk or storage purchasers of fuel shall maintain a withdrawal or disbursement record when such fuel is used in taxable highway or road units. This record shall be kept on all units fueling from this tank showing the unit fueled, gallons withdrawn, and the date of withdrawal. Tax on bulk purchases shall be paid at the time of purchase in accordance with KRS 138.220 and 234.320. If a motor carrier uses tax free bulk storage fuel to fuel taxable units (highway units), tax will be levied on total fuel purchased for bulk storage.

(a) Any use of fuel from a tax free storage tank without adequate records to prove on-highway use shall be taxable. Approved location of tax free storage shall be issued by the Revenue Cabinet before tax free fuel is purchased.

(b) Credit for fuel purchase receipts other than for the taxable units shall not be allowed.

(4) In instances where fuel is purchased by trip-leased units and the lessee is responsible for the Kentucky highway tax, all receipts shall be made in the name of the lessee. Receipts made out in the name other than the person or company responsible for the fuel tax shall be invalid.

(5) Certain motor vehicles including, but not limited to, mixers, pumps, load lifts, refrigeration equipment, utilize power takeoff equipment and similar devices which involve consumption of fuel from the same tanks that serve to power the operation of the vehicles upon the highways. Operators of those types of vehicles utilizing such equipment, may adjust the miles per gallon entry on their Kentucky highway use tax returns to reflect fuel actually consumed by such power takeoff equipment in operations over the highway, provided, however, that any adjustment claimed therefor must be substantiated by adequate records, and is subject to audit by the Transportation Cabinet. Nothing herein contained shall be construed as authorizing a taxpayer to claim tax credit in respect to taxes paid on fuels which are actually consumed on off-highway operations.

Section 8. Cancellation of License. (1) If a motor carrier fails to comply with the terms of KRS 138.655 to 138.725, or these regulations, its Kentucky Highway Use Tax License may be cancelled. Reasons for cancellation include, but are not limited to, the following:

(a) Failure to file tax return thirty (30) days after the due date. The licensee will be mailed a second notice or reminder and be given fifteen (15) days to file the return if he has not filed his tax return within thirty (30) days after the due date. If the licensee fails to comply with the second notice, the license will be subject to cancellation.

(b) Failure to pay additional taxes assessed by the department. [To be reinstated after cancellation of license, the carrier must prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax Returns.]

(c) Failure by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the records are produced at the place stated in the demand.

Section 9. Procedure upon Cancellation of License. (1) Upon cancellation of Kentucky Highway Use License in accordance with the provisions of KRS 138.675 and after notice to the carrier by mailing the same to the address on file in the department, the carrier shall immediately return to the department the license and all motor vehicle identification [cab] cards issued to such carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a motor vehicle identification [cab] card after notice of revocation of the highway use license shown thereon, shall be a violation of this regulation.

Section 10. Coal Shippers License and Tax Status Changes of All Motor Carriers. (1) All persons liable or responsible for payment of ton tax or payments due to cooperative agreements and transporting coal over the state maintained highways system by motor vehicles exceeding the gross weights or gross axle weights prescribed by the Secretary of Transportation pursuant to KRS 189.222 shall obtain an approved tax reporting license from the Department of Vehicle Regulation. Prior to the issuance of the tax reporting license, the licensee must obtain a certified transportation plan from the Department of Vehicle Regulation in accordance with 601 KAR 35:020. The Department shall assign each taxpayer a license number.

(2) Licensees referenced in subsection (1) of this section that have an approved cooperative agreement shall pay their tax in accordance with the terms of the cooperative agreement.

(3) Licensees referenced in subsection (1) of this section that do not have a cooperative agreement shall report and pay their coal ton tax as follows:

(a) The coal ton tax shall be reported on the requisite forms as prescribed by the Transportation Cabinet.

(b) The coal ton tax shall be reported and paid monthly.

(c) The coal ton tax returns are due within twenty (20) days following the close of each monthly period.

(4) The exempt and/or non-exempt status of each vehicle in regard to Kentucky motor fuel surtax or weight distance tax may be changed only once during each quarter, (January 1 through March 31; April 1 through June 30; July 1 through September 30; October 1 through December 31). A tax liability shall not change because of a status change, until the first day of the next succeeding quarter after the status is changed. The change from non-exempt status to exempt status requires that an application be filed with the Transportation Cabinet.

Section 11. Tax Liability and Protest Procedures. (1) The licensee will be mailed a supplemental tax statement, if additional tax is found to be owed as the result of an audit or found as the result of an examination of licensee's tax return. The licensee has thirty (30) days to pay or protest to the department per KRS 131.110 [138.110] in writing any assessment or tax liability imposed by the department. A protest must be accompanied by a supporting statement identifying specific adjustments being protested and setting forth the reasons upon which the protest is being made.

(2) If the licensee so desires, he may, within thirty (30) days, protest directly to the Kentucky Board of Tax Appeals.

(3) The department will acknowledge receipt of the protest and if protest is acceptable, a tax conference will be set between the department and licensee within sixty (60) days of the protest. The department will notify the licensee within thirty (30) days its decision to deny or accept the reasons of the protest. If denied, the licensee may protest to the Kentucky Board of Tax Appeals.

(4) If the licensee does not acknowledge the tax statement within thirty (30) days, a reminder will be sent to licensee demanding payment within fifteen (15) days. If within fifteen (15) days, the taxes have not been remitted to the department, a demand will be made against the licensee's surety bond. Any balance of unpaid taxes will be submitted to the Transportation Cabinet's [department's] legal section for collection.

Section 12. Penalties. In addition to any other penalties which may be imposed under KRS 138.990 and any other applicable laws, the licensee shall be subject to the civil penalties provided for in KRS 138.775.

Section 13. Inspection. Any highway enforcement officer or state police officer may inspect the vehicle identification card, license registration, driver's log, lease, trip sheet or shipping document to determine if the vehicle is qualified to operate on the highways of the state of Kentucky. The law enforcement officer may also weigh vehicles to determine if the gross weight conforms to the licensed weight on the vehicle identification card.

Section 14. Records Disposition. The department will retain the active file of KYU tax returns for at least five (5) years. An inactive KYU license will be retained two (2) years after cancellation.

Section 15. Reinstatement of License. (1) If the carrier desires to be reinstated after cancellation, the carrier must:

(a) Prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax returns.

(b) Submit quarterly returns for all missed periods.

(c) Pay all taxes for missed returns plus penalties and interest.

Section 16. Licensee taxpayers, for purposes of ease in tax reporting compliance, and department administration and audit convenience, may, upon written request to the department and receipt of written permission from the department, report miles operated upon Kentucky highways on the basis of the current Household Goods Bureau mileage guide, and supplements thereto, in lieu of reporting on the basis of actual miles operated, provided, however, that such mileages are reported in respect to movements between the points and over the routes actually operated, and provided that such mileages would not result in a consistent understatement of actual miles operated on Kentucky highways.

Section 17. Maintenance of Records. (1) Licensees reporting and paying taxes under the cooperative agreement, certified transportation plan, or ton tax provision shall keep and maintain records of all coal shipments over the state maintained public highways.

(2) Each licensee shall also maintain weight tickets, bona fide third party documents or other documents to accurately verify tonnage that will reflect the true tonnage transported over said highways and the distance that such tonnage was transported over such highway.

(3) The weight ticket or third party document shall include but not be limited to the following:

(a) Name and identification number of the mine owner, severer, processor, broker or shipper.

(b) Name and KYU number of person transporting coal.

(c) Transporter's assigned unit vehicle number.

(d) Points of origin and destination.

(4) All records shall be maintained for five (5) years for audit and tax purposes.

(5) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same information as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

C. LESLIE DAWSON, Secretary
JOHN K. PENROD, Commissioner
APPROVED BY AGENCY: June 27, 1986
FILED WITH LRC: July 1, 1986 at 9 a.m.

STATEMENT OF EMERGENCY

Amendments to 702 KAR 1:010 promulgate clear standards and hearing procedures for local school districts' facilities plans. The "School Facilities Construction Criteria" need to go into effect on an emergency basis in order to clarify whether requested amendments to facilities plans are to be assessed under new or old rules and in order to facilitate construction planning and School Facilities Construction participation. This regulation will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
ALICE McDONALD, Superintendent

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 1:010E. Facilities surveys and plans.

RELATES TO: KRS 157.420, 157.622
PURSUANT TO: KRS 156.070
EFFECTIVE: July 10, 1986
NECESSITY AND FUNCTION: KRS 157.420(3) requires that the capital outlay portion of Foundation Program funds be used by school districts for capital outlay projects approved by the Superintendent of Public Instruction in accordance with requirements of law and based on a survey made in accordance with regulations of the State Board of Education; and KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. This regulation provides for the development and adoption of a written plan describing construction and use of school facilities to guide school administrators in meeting the needs of the district.

Section 1. The Superintendent of Public Instruction shall conduct or cause to be conducted a facilities survey of each school district as a part of the periodic accreditation process [at least every five (5) years], and shall deliver to the local board of education the state board-approved [a] report which contains an assessment of existing conditions and a [recommended] facilities plan which designates an organizational pattern, classification of school centers, and a priority schedule for construction and renovation needs. This survey shall be done in conjunction with the accreditation program except for requested and justified amendments [as provided in Section 4 of this regulation, and shall be subject to the public hearing procedures required therefor by 704 KAR 10:022].

Section 2. Each school district's facilities plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "School Facilities Construction Criteria, July, 1986," which is hereby adopted and incorporated by reference. Copies of said document can be obtained from the Division of Buildings and Grounds, Department of Education. [A facilities survey report upon adoption by the local board of education and the State Board of Education shall become the facilities plan for the district unless an appeal, in lieu of adoption by the local board, is submitted to the Superintendent of Public Instruction in accordance with the accreditation process appeal provisions set forth in 704 KAR 10:022. Each appeal shall include a proposed full facilities plan with the local board's requested priority listing of construction needs.]

Section 3. The facilities plan shall remain in effect until any changes have been approved by the State Board of Education.

[Section 4. A local board of education may at any time request the Superintendent of Public Instruction to conduct a review of a facilities plan for the district. Upon the presentation of written evidence that circumstances exist which necessitate temporary or permanent suspension or alteration of the adopted plan, the State Board of Education shall, at its next regular meeting, schedule a public hearing and designate a hearing officer to conduct the public hearing. The Superintendent of Public Instruction shall present at the public hearing such data as is appropriate to provide the hearing officer objective information upon which to make a recommendation. Members of the local school board, the general public, and interested individuals and parties shall be provided an opportunity to testify at the hearing. The hearing officer, whenever practicable, shall present his or her report at the next regularly scheduled meeting of the State Board of Education after the public hearing, at which time the State Board of Education shall make a final decision relative to the requested facility plan amendment. The Superintendent of Public Instruction shall make a recommendation to the State Board of Education relative to the requested revision of the facility plan at the time the hearing officer makes his or her report.]

Section 4. [5.] The adopted facilities plan shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district will permit as determined by the Superintendent of Public Instruction or the School Facilities Construction Commission. The scope of any construction project recommended in the facilities plan shall not be changed unless the plan is amended.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 10, 1986 at 1 p.m.

STATEMENT OF EMERGENCY

704 KAR 15:080 was approved by the State Board of Education on May 7, 1986. The regulation specified that an Advisory Council would be appointed by the Superintendent of Public Instruction to select an achievement test and to determine passing scores for implementation of one qualification for teachers' aides in Kentucky schools. The Advisory Council has met and carried out these functions. The name of the test and the scores need to be incorporated in the regulation on an emergency basis to enable teachers' aides to qualify for employment in the 1986-87 school year. This emergency regulation

will be replaced by an ordinary administrative regulation.

MARTHA LAYNE COLLINS, Governor
ALICE McDONALD, Superintendent

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 15:080E. Paraprofessional employees and volunteer personnel.

RELATES TO: KRS 161.010, 161.030, 161.044
PURSUANT TO: KRS 156.070, 161.044
EFFECTIVE: July 10, 1986
NECESSITY AND FUNCTION: KRS 161.010 defines a paraprofessional, KRS 161.030 vests the certification of all teachers and other school personnel with the State Board of Education, and KRS 161.044 directs the State Board to establish a plan for the qualification and utilization of adult paraprofessional employees and adult volunteer personnel in the schools. This regulation prescribes the guidelines by which local school districts may utilize and supervise adult paraprofessional employees and adult volunteer personnel.

Section 1. Local boards of education may utilize adult volunteer and adult paraprofessional employees in accordance with KRS 161.044 and 161.010(4) and (5), and subject to the following provisions:

(1) All instructional teachers' aides working in kindergarten classes and all teachers' aides hired by the local board of education after July 1, 1986, except those with teacher certification, shall be subject to the following requirements:

(a) A high school diploma or a high school equivalency certificate.

(b) A passing score on an achievement test. Beginning with the 1986-87 school year, the Adult Basic Learning Examination (ABLE) shall be utilized to measure achievement in the areas of reading and mathematics. Passing score on the appropriate subtests of the ABLE shall be those scores which are equivalent to the scores obtained by the norming groups at the 22nd percentile.

(c) Successful completion of an in-service training program. The program shall consist of a minimum of twelve (12) hours of formal, documented instruction to include training in the areas of the role of the paraprofessional, educational terminology, school practices and policies, interpersonal relationships, learning atmosphere and tutorial instruction. Local school districts shall utilize the in-service program designated by the State Board of Education or an alternative program approved by the Department of Education which meets the requirements of this subsection.

(d) An annual evaluation by the appropriate school administrator with input from the supervising teacher or teachers. Local districts shall adopt a policy which sets forth the evaluation process for teachers' aides and the use to be made of such evaluations in future employment decisions.

(2) All full-time noninstructional teachers' aides shall achieve a passing score on an achievement test. The test shall be the same test which is administered to instructional teachers' aides and the passing scores shall be identical to those established for instructional teachers' aides.

(3) Local boards of education shall give preference to an applicant for the position of teacher's aide or paraprofessional who has a regular or emergency teacher certification.

(4) [(1)] For each paraprofessional employee the local school district shall prepare and maintain an up-to-date job description which outlines the duties that the individual is authorized to perform. [and which further describes the formal preparation or professional judgments of competency that corroborate the qualifications of the individual to perform those duties. The professional administrative and teaching staff may establish formal evaluation procedures to arrive at the professional judgments of competency that are to be entered into the written job description.]

(5) [(2)] The professional administrative and teaching staff, as well as the paraprofessional employees, shall have copies of the job descriptions of the paraprofessional personnel under their direction and shall limit the work assignment of the paraprofessional personnel to the duties outlined in the job descriptions.

(6) [(3)] Paraprofessional employees and volunteer personnel may be assigned within the limitations of their competency to assist with classroom and any otherwise authorized community-based instruction, as appropriately directed and [personally] supervised by the professional administrative and teaching staff. Such assistance shall not include the continuing day-to-day responsibility for teaching a particular academic subject or group of pupils in the role ordinarily ascribed to a teacher in the regular, special education, and vocational education program areas, and paraprofessional employees and volunteer personnel involved in regular and remedial classroom instruction shall be personally supervised on a continuing day-to-day basis by the supervising teacher.

Section 2. In the event a local board of education is unable to fully staff an athletic program with qualified personnel under 702 KAR 7:090 Sections 1 and 2, the local district superintendent may request annual approval from the Superintendent of Public Instruction for an alternative staffing arrangement for noncertified paraprofessionals performing routine, assignments, pursuant to 702 KAR 7:090, Section 2(2). Appropriate justification shall be submitted in writing on forms provided by the head of the Office of Instruction.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 10, 1986 at 1 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation

will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Office of Policy and Budget

900 KAR 1:060E. Protection of human subjects.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 194.050
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: The cabinet is required, by 45 CFR 46.101 through 46.409, to have an Institutional Review Board for the Protection of Human Subjects (IRB) to protect the rights and welfare of human subjects of research conducted or sponsored by the cabinet. KRS 194.050 authorizes the Secretary for Human Resources to adopt such regulations as are necessary to qualify for the receipt of federal funds. This regulation adopts, by reference, applicable federal regulations and publications which set forth the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation, ethical principles and guidelines, a listing of research activities which may be reviewed through expedited review procedures and other relevant matters.

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below:
(1) "Board" means the cabinet's Institutional Review Board established by this regulation and attached to the Office of Policy and Budget.
(2) "Health risk project" means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of human research subjects.
(3) "Research" shall have the meaning set forth in 45 CFR 46.102(e) and in addition shall include descriptive and exploratory research activities, that lay the ground work for contributions to knowledge.
(4) Research shall be considered "sponsored" by the Cabinet for Human Resources if it is supported financially by the cabinet, if it uses staff or facilities provided by the cabinet, or if it is sponsored or endorsed by cabinet policy makers.
(5) "Auxiliary review board" means an independently functioning local IRB within the Cabinet for Human Resources established to serve a particular facility or institution.

Section 2. Incorporation by Reference. The cabinet hereby incorporates by reference 45 CFR 46.101 through 45 CFR 46.409, revised as of 3/8/83, pertaining to the Protection of Human Subjects. The decisions of the board concerning the protection of human subjects shall be guided by the "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research," published 4/18/79. The federal regulations incorporated by reference and the Belmont Report are available upon request from the Office of Policy and Budget, Kentucky Cabinet for Human Resources and as a two (2) volume appendix (DHEW Publication No.(OS) 78-0013 and No.(OS) 78-0014) from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 3. Institutional Review Board. (1) An Institutional Review Board (IRB) for the Protection of Human Subjects within the Cabinet for Human Resources (CHR) is hereby created. The board shall be attached to the Office of Policy and Budget (OPB).
(2) The IRB shall consist of not less than five (5) nor more than eleven (11) members appointed by the secretary. Members representing various professional and academic fields shall be nominated by department commissioners or by office heads and appointed by the secretary. The board shall meet as needed to review projects. The board shall include a chairman appointed by the secretary of the cabinet.
(3) The Executive Director of the Office of Policy and Budget shall provide the necessary staff and administrative support and shall serve as liaison between the board and the U.S. Department of Health and Human Services. Staff appointed by the Executive Director of the Office of Policy and Budget shall ensure the maintenance of appropriate records; conduct a preliminary review of submitted projects on a timely basis; refer all projects, to which the regulations are appicable, to the board; and make recommendations to the board on the disposition of the applicable projects.

Section 4. Project Submission. (1) It shall be the responsibility of the appropriate division director, commissioner, or office head to direct the project administrators under their jurisdiction to submit research projects, involving human subjects, to OPB for possible consideration by the board. Project submission shall include three (3) copies each where applicable, of: a request for approval form, a narrative description of the project's purpose and proposed research procedures, the research instrument(s) to be used, a narrative description of how subject confidentiality will be addressed, and the consent form.
(2) No modification in the research protocol or design of an approved research project, that could increase the level of risk to the subjects shall be implemented unless first approved by the board. In the event that such alterations are necessary, it shall be the responsibility of the research administrator to obtain the prior approval of the board. Failure to obtain such approval may result in the suspension or termination of the initial board approval and the requirement that all research activity be stopped.

Section 5. Scope of Board Approval. (1) Board approval of a project represents only a judgment that human subjects have been adequately protected and shall not in any way represent a judgment concerning its ultimate research value or a policy decision regarding the value of the research to the Cabinet for Human Resources.
(2) The board shall have the ultimate responsibility of reviewing all research projects involving human subjects, when the research is sponsored by the Cabinet for Human Resources and when it is not specifically exempted from board review. Where the primary

review is performed by an approved auxiliary review board, the board may limit its review to the findings and recommendations of the auxiliary review board or the board may choose to conduct its own review of the project.

(3) A research administrator may request a reconsideration of an adverse decision by the board by submitting a written request for reconsideration to the Executive Director of the Office of Policy and Budget. Such a request must be made within thirty (30) days of the principal investigator's notification of adverse decision. Upon receipt, the request for reconsideration and any related documents shall be conveyed to the board chairman for reconsideration. Such a reconsideration shall be made in the same manner as the initial review.

Section 6. Board Responsibilities. (1) The board chairman shall, in coordination with the Office of Policy and Budget, call such meetings as needed to conduct board business on a timely basis.

(2) Reviews and recommendations concerning projects shall be consistent with the criteria in the federal regulations incorporated by reference using guidelines and forms adopted by the board.

Section 7. Responsibilties of Principal Investigators. (1) If any changes are made in research design or protocol that in any way affect the level of risk to subjects, confidentiality procedures, or consent procedures, such changes shall be submitted, before implementation, to the board for approval.

(2) If a project is defined as a "health risk project" by the board, the principal investigator shall report to the board all research subject deaths, which become known to him or her, whether the death appears likely to be related to participation in the research project. Reports of such deaths shall be made to the board in writing within seven (7) days of the principal investigator's knowledge of the death.

Section 8. Auxiliary Review Boards. The chief executive of CHR institutions or facilities conducting research, subject to the federal regulations pertaining to human subjects, may form auxiliary review boards to conduct the required review of such projects. The establishment of auxiliary review boards shall be approved by the Secretary of the Cabinet for Human Resources. Auxiliary review boards, as institutional review boards, shall conduct reviews consistent with these administrative regulations. The findings and recommendations of the auxiliary review board on all research studies involving risk to human subjects shall be forwarded, at least five (5) working days before initiation of the research, to the Office of Policy and Budget for review by the board. The board shall respond to the auxiliary review board, within twenty-one (21) days of the board's receipt of the auxiliary review board's finding and recommendations.

Section 9. Confidentiality. Except as otherwise provided by law or by regulation of the cabinet, research information that identifies individual subjects shall be regarded as confidential and shall not be disclosed to persons outside the research project staff without the subject's prior written authorization. Nothing contained herein shall be deemed to prevent the release of raw or summary data, that does not identify subjects.

JOHN CUBINE, Executive Director
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Office of the Inspector General

902 KAR 20:016E. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.107, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105, Executive Order 86-366
EFFECTIVE: July 14, 1986
NECESSITY AND FUNCTION: KRS 216B.040 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General. This regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Scope of Operations and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 2. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of

hospital training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietitian" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "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) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "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 must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(12) "Two-step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsiblity, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment

procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the post-discharge care of the patient. All pertinent information concerning post-discharge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within fifteen (15) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsbilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

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/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for pre-employment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior

skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed one (1) year of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually within two (2) weeks before or after the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for one (1) year unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, social security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physicial plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be current written infection control measures, including:

1. Policies concerning the admission and isolation of patients with specific or suspected infectious diseases, protective isolation of appropriate patients and protective routine for personnel and visitors;
2. Written procedures for the bacteriological testing of all areas of possible infection. Results of all testing shall be recorded and reported to the infection control committee;
3. The method of control used in relation to the sterilization of supplies and water; and
4. Policies for the protection of patients from employees who have a communicable disease.

(e) The hospital shall provide inservice education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.
2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.
3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.
4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.
5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.
6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid containers immediately after use. After use, all needles shall also be rendered unusable. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(h) The hospital shall establish a written policy for the handling and disposal of all infectious and pathological waste. Any incinerator used for the disposal of waste shall be incompliance with 401 KAR 59:020 and 401 KAR 61:010.

1. All unpreserved tissue specimens from surgical or necropsy procedures shall be incinerated, on site or off site.

2. The following waste shall be sterilized before disposal or be disposed of by incineration if they are conbustible:

a. Dressings and materials from open or contaminated wounds;

b. Waste materials and disposable linens from isolation rooms;

c. Culture plates;

d. Test tubes;

e. Sputum cups; and

f. Contaminated sponges and swabs.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas ventilated to the exterior of the buildings; this air shall not be allowed to recirculate into the facility.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other resaon. 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 shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist 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 anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Physician's, or dentist's when applicable, progress notes and nurses' observations;

11. Record of temperature, pulse and respiration;

12. 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;

13. Discharge summary, including condition of patient on discharge, and date of discharge; [and]

14. In case of death, autopsy findings, if performed; and

15. Written protocols for organ procurement.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall

include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

(d) No patient with impending or declared brain death and/or cardiopulmonary death should be considered as a potential organ 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/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing care plans, and nursing care procedures.

1. Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physican, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary. the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietitian or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of

patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage. handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. 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 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their inservice training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgury 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 desingated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficieny testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and dispostion of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for futher testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review commitee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, 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 dispostion of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States

Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall ap-ply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(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/rehabilitation service.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written

policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical work-up in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a pre-anesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a post-anesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The post-anesthetic follow-up note shall be written within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct

effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered before the infant is removed from the delivery room.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or ''room-in'' with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure

902 KAR 20:026E. Operations and services; skilled nursing facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
EFFECTIVE: July 7, 1986
NECESSITY AND FUNCTION: KRS 216B.040 and

216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of skilled nursing facilities and the services to be provided by skilled nursing facilities.

Section 1. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 2. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(2) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(3) "Facility" means a skilled nursing facility.

(4) "License" means an authorization issued by the Board for the purpose of operating a skilled nursing facility and offering skilled nursing services.

(5) "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.

(6) "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

(7) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(8) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.

(9) "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.

(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(11) "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.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Personnel policies, practices and procedures that support sound patient care.

(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dieticians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.
2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review; and
6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious ill-ness, visiting hours, type of diets offered and services rendered.

(6) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(7) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When a transfer is to another level of care within the facility, the complete patient record or a current summary thereof shall be transferred with the patient.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis Testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing inservice education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multi-disciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subparagraph 7a of Section 3(8)(d) may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for non-professional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate in training programs, case conferences, and arrangements for

staff orientation to community services and patient needs.

(10) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. The physician's orders for medication, diet, and therapeutic services. These shall be dated and signed by the physician.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the ninetieth day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of non-nursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as

prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribed specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

a. Services in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has e pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaulation pursuant to Section 4(1)(b). The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314). Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

4. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

5. Communicable diseases.

a. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

(i) Staff of facility have completed a training program approved by the cabinet.

(ii) The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

(iii) The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

b. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other

patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: Patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the berefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designatec person responsible for food service is not a cualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist

shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or beding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services

shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure

902 KAR 20:036E. Operation and services; personal care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
EFFECTIVE: July 7, 1986
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of personal care homes and the services to be provided by personal care homes.

Section 1. Scope of Operations and Services. Personal care homes are establishments with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services and social and recreational activities. Residents in a personal care home must be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory, and are able to manage most of the activities of daily living. Persons who are nonambulatory or nonmobile shall not be eligible for residence in a personal care home.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(2) "Activities services" means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.

(3) "Administrator" means a person who:

(a) Has sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator must: be literate; be a high school graduate or have passed the General Education Development Test; be twenty-one (21) years of age or older; or

(b) Is licensed as a nursing home administrator as provided by KRS 216A.080.

(4) "Ambulatory" means able to walk without assistance.

(5) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(6) "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services.

(7) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches or a wheelchair and capable of independent

bed-to-chair transfer or bed-to-chair transfer with minimal assistance.

(8) "Nonambulatory" means unable to walk without assistance.

(9) "Nonmobile" means unable to move from place to place.

(10) "Qualified dietician or nutritionist" means a person who:

(a) Has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) Has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.

(11) "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.

(12) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(13) "Residential care" means services which include but are not limited to: room accomodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens.

(14) "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.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the personal care home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(b) The licensee shall establish policies for the administration and operation of the service.

(2) Administrator. All personal care facilities shall have an administrator who shall be responsible for the operation of the facility and shall delegate such responsibility in his or her absence.

(3) Admission.

(a) Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) No personal care home may care or be responsible for the care of more residents than the capacity indicated on the license, regardless of where housed.

(c) Upon admission the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) Upon admission each resident shall have a complete medical evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done within fourteen (14) days prior to admission).

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult and child protection. Personal care homes shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(6) Transfer procedures and agreements.

(a) Personal care homes shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of inpatient care not provided by the personal care home. Any facility which does not have a transfer agreement in effect but has attempted in good faith to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) The administrator shall initiate transfer through the resident's physician, and/or appropriate agencies when the resident's condition is not within the scope of services of a personal care home.

(c) In the event of transfer to another health care facility a current summary of the resident's medical record shall accompany the resident. When a transfer is to another level of care within the same facility a copy of the resident's record or current summary thereof shall accompany the resident.

(7) Tuberculosis Testing. All employees and residents shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(8) Personnel.

(a) Current employee records shall be maintained and shall include a record of each employee's training and experience, evidence of current licensure, registration or certification where required by law, health records and evaluation of performance, along with employee's name, address and social security number.

(b) All employees must be of an age in conformity with state laws.

(c) Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(d) All dietary employees must wear hairnets.

(e) Inservice training. All personal care home employees shall receive inservice training to correspond with the duties of their respective jobs. Documentation of inservice training shall be maintained in the employee's record and shall include: who gave the training, date and period of time training was given and a summary of what the training consisted of. Inservice training shall include but not be limited to the following:

1. Policies of the facility in regard to the

performance of their duties;
2. Services provided by the facility;
3. Recordkeeping procedures;
4. Procedures for the reporting of cases of adult and child abuse, neglect or exploitation to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335;
5. Patient rights as provided for in KRS 216.510 to 216.525;
6. Methods of assisting patients to achieve maximum abilities in activities of daily living;
7. Procedures for the proper application of physical restraints;
8. Procedures for maintaining a clean, healthful and pleasant environment;
9. The aging process;
10. The emotional problems of illness;
11. Use of medication; and
12. Therapeutic diets.

(f) Staffing requirements.

1. The number of personnel required shall be based on: the number of patients; amount and kind of personal care, supervision, and program needed to meet the needs of the residents as determined by the definitions of care and services required in this regulation.

2. If the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. The administrator shall designate a person for each of the following areas who will be primarily responsible for the coordination and provisions of services (personnel may be required to perform combined duties):
a. Recordkeeping;
b. Basic health and health related services; and
c. Activity services.

4. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

5. One (1) attendant shall be awake and on duty on each floor in the facility at all times.

(9) Medical records. The person in charge of medical records shall assure that a complete medical record shall be kept for each resident with all entries current, dated and signed. Entries should be made in ink, ballpoint, or typed. Each record shall include the following:

(a) Identification information, including:
1. Resident's name;
2. Social Security, Medicare and Medical Assistance identification number (if appropriate);
3. Marital status;
4. Birthdate;
5. Age;
6. Sex;
7. Home address;
8. Religion and personal clergyman, if any (with consent of resident);
9. Attending physician, dentist and podiatrist, if any; address and phone number for each one;
10. Next of kin and/or responsible person, address and telephone number;
11. Date of admission and discharge;
12. In the event of transfer, a copy of the summary of resident's records; and
13. Monthly recording of the resident's weight.

(b) If admitted from another facility a discharge summary or transfer summary.

(c) Admitting medical evaluation.

(d) Physician's report on annual medical evaluation of the resident.

(e) Physician progress notes indicating changes in resident's condition, at time of each visit by the physician and consultant.

(f) Physician orders for medication or therapeutic services.

(g) Nurses' or staff notes indicating changes in resident's condition as they occur.

(h) Reports of accidents or acute illnesses of any resident.

(i) Reports of social services, dental, laboratory, x-ray and special reports of consultants or therapists when the resident receives these services.

(j) Medication and treatment sheets including all medications, treatments and special procedures performed indicating date and time. Entries shall be initialed by the personnel rendering treatment or administering medication.

(k) Reports of the use of physical restraints, the procedures used, and the checks and releases of physical restraints.

(l) A record of resident's discharge destination.

(10) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years, or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Basic health and health related services. All personal care homes shall provide basic health and health related services including: continuous supervision and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self administration of medications, storage and control of medications, when necessary, and making arrangements for obtaining therapeutic services ordered by the resident's physician which are not available in the facility. All personal care homes shall meet the following requirements relating to the provision of basic health and health related services:

(a) The person in charge of the facility shall be responsible for obtaining medical care by a licensed physician promptly in cases of accident or acute illness of any resident. Such instances shall be recorded in the resident's medical record.

(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed physician. Administration of all medications and provisions of therapeutic services shall be recorded in the resident's medical record.

(c) If orders are received by telephone from a physician, the order shall be recorded on the individual's medical record and signed by the physician within fourteen (14) days.

(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator, and any staff member who may have been witness to the incident. The report shall be filed in an incident file.

(e) Controlled substances. No home shall keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a physician. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the resident; the date, time, kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the resident shall be destroyed in accordance with KRS 218A.230, or CFR 21-1307.21, or sent by registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(f) All medicines must be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. All medicines kept by the home shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration must be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use must be stored separately from those administered by mouth and injection. Provisions must also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations.

(g) If a resident manifests persistent behavior that may require psychiatric treatment, the resident's physician shall be notified in order to evaluate and direct the resident's care. If the resident's condition does not improve enough for his continued stay in a personal care facility, the physician shall initiate transfer of the resident to an appropriate facility as soon as possible.

(h) Use of restraints or protective devices. No form of restraints or protective devices shall be used except under written orders of the attending physician.

1. Protective devices. Protective devices may be used to protect the resident from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the resident the greatest possible degree of mobility. In no case shall a locking device be used.

2. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the resident's record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

3. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(i) Special purpose areas for the protection or confinement of a resident shall not be permitted unless approved in writing by the Division of Licensure and Regulation of the Cabinet of Human Resources with specification of use of the area.

(j) Each resident shall have an annual medical evaluation by a physician. The results of this evaluation shall be recorded in the resident's medical record.

(k) Communicable diseases.

1. No personal care home shall knowingly admit a person suffering from a communicable disease which is reportable to the health department, except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

a. Staff of facility have completed a training program approved by the cabinet.

b. The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

c. The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

2. If, after admission, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.

(2) Residential care services. All personal care homes shall provide residential care services to all residents including: room accommodations, housekeeping and maintenance services, and dietary services. All personal care homes shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a bed equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the residents comfortable. Rubber or other impervious sheets shall be

placed over the mattress cover whenever necesary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The home shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors and a night light.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

(b) Housekeeping and maintenance services.

1. The home shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen should be on hand at all times. Soiled clothing and linens shall receive immediate attention and should not be allowed to accumulate. Clothing or bedding used by one (1) resident shall not be used by another until it has been laundered or dry cleaned.

3. Laundering of resident's normal personal clothing and bed linens. Resident's personal clothing and bed linens shall be laundered by the home as often as is necessary. Resident's personal clothing shall be laundered by the home unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident-owner and returned to the correct resident.

4. Safety. The home shall take appropriate precautions to insure safety of residents, visitors and employees.

5. Maintenance. The premises shall be well kept and in good repair. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds are well kept and the exterior of the building and including the sidewalk, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. The compounds shall be stored under lock.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets, and the designated person responsible for food services is not a qualified dietitian or nutritionist, consultation by a qualified dietitian or qualified nutritionist shall be provided.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition. Nutrition needs of residents shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and menus shall be kept on file for thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be attractively served at the proper temperatures and in a form to meet individual needs. A file of tested recipes, adjusted to appropriate yield, shall be maintained. Food shall be cut, chopped, or ground to meet individual needs. If a resident refuses food served, substitutes shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

f. Ice water must be readily available to the residents at all times.

5. Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(3) Personal care services. All persoral care homes shall provide services to assist residents to achieve and maintain good personal hygiene including the level of assistance necessary with:

(a) Washing and bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with washing and bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as towels, brushes and combs shall not be used in common.

(b) Shaving.

(c) Cleaning and trimming of fingernails and toenails.

(d) Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

(e) Washing, grooming, and cutting of hair.
(4) Activity services.
(a) All personal care homes shall provide social and recreational activities to: stimulate physical and mental abilities to the fullest extent; encourage and develop a sense of usefulness and self respect; prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age, be of sufficient variety that they meet the needs of the various types of residents in the home.
(b) All personal care homes shall meet the following requirements relating to the provision of activity services:
1. Staff. A person designated by the administrator shall be responsible for the activity program. (Volunteer groups may be enlisted to assist with carrying out the activities program.)
2. There shall be a planned activity period each day. The schedule shall be current and posted.
3. The program shall be planned for group and individual activities, both within and outside of the facility.
4. The person responsible for activities shall maintain a current list of residents on which precautions are noted regarding a resident's condition that might restrict or modify his participation in the program.
5. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.
6. The facility shall provide supplies and equipment for the activities program.
7. Reading materials, radios, games and TV sets shall be provided for the residents.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure

902 KAR 20:048E. Operations and services; nursing homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
EFFECTIVE: July 7, 1986
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of existing nursing homes and the services to be provided by existing nursing homes. This regulation does not address the establishment of new nursing homes.

Section 1. Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).
(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.
(4) "Facility" means a nursing home facility.
(5) "License" means an authorization issued by the Board for the purpose of operating a nursing home and offering nursing home services.
(6) "PRN medications" means medications administered as needed.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(9) "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.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.
(2) Administrator.
(a) All facilities shall have an administrator who is responsible for the operation of the

facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a variety of medical conditions and require medical services, continuous medical services, and inpatient care but do not currently require inpatient hospital services. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of

personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

7. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

8. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

9. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multi-disciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subparagraph 9a of Section 3(9)(c) may be assigned duties appropriate to their training and experience.

10. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

11. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

12. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the sixtieth day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of non-nursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

4. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper

positioning of bedfast patients;
b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;
c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;
d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;
e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.
(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.
(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.
1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patients preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.
2. Nursing care plans shall be available for use by all nursing personnel.
3. Nursing care plans shall be reviewed and revised as needed.
4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.
(3) Specialized rehabilitative services.
(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.
(b) Therapy services shall include:
1. Physical therapy which includes:
a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;
b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.
2. Speech therapy which includes:
a. Service in speech pathology or audiology;
b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;
c. Determination and recommendation of appropriate speech and hearing services.
3. Occupational therapy services which include:
a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;
b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.
(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.
(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.
(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.
(5) Pharmaceutical services.
(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.
(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the department.
(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.
(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:
1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.
2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.
3. Provisions shall be made for emergency withdrawal of medications from the drug supply.
(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.
(f) Medication services.
1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen

is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act (KRS Chapter 314) or by personnel who have completed a state approved training program. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

5. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

6. Communicable diseases.

a. No patient shall knowingly be admitted to

the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

(i) Staff of facility have completed a training program approved by the cabinet.

(ii) The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

(iii) The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

b. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a

variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(11) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a

sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. .Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure

902 KAR 20:051E. Operation and services; intermediate care.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
EFFECTIVE: July 7, 1986
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of intermediate care facilities and the services to be provided by intermediate care facilities.

Section 1. Scope of Operations and Services. Intermediate care facilities are establishments with permanent facilities including inpatient beds. Services provided include twenty-four (24) hour supervision of patients, services including physician, nursing, pharmaceutical, personal care, activities and residential services. Patients in an intermediate care facility must have a physical or mental condition that requires intermittent nursing services along with continuous supervision of the activities of daily living.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(4) "Facility" means an intermediate care facility.

(5) "License" means an authorization issued by the Board for the purpose of operating an intermediate care facility and offering intermediate care services.

(6) "PRN medications" means medications administered as needed.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(9) "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.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence. The administrator shall not be the nursing services supervisor in a facility with more than sixty (60) beds.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Department for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. The facility shall admit only persons who have a physical or mental condition which requires intermittent nursing services and continuous supervision of activities of daily living. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within seventy-two (72) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physicial examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term facility if done within fourteen (14) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious ill-ness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other

institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis Testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training in rehabilitative nursing. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing care.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

h. Assuring that a written monthly assessment of the patient's general condition is completed.

i. Assuring that the establishment, review and modification of nursing care plans for each patient is done by licensed nursing personnel.

j. Assuring that all medications are administered by licensed personnel or by other personnel who have completed a state-approved training program.

k. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

8. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

9. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within fourteen (14) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) General requirements.

(a) Patient care equipment. There shall be a sufficient quantity of patient care equipment of satisfactory design and in good condition to carry out established patient care procedures. The equipment shall include:

1. Wheelchairs with brakes;

2. Walkers;

3. Bedside rails;

4. Bedpans and urinals (permanent or disposable);

5. Emesis basins and wash basins (permanent or disposable);

6. Footstools;

7. Bedside commodes;

8. Foot cradles;

9. Foot boards;

10. Under-the-mattress bed boards;

11. Trapeze frames;

12. Transfer board; and

13. An autoclave for sterilization of nursing equipment and supplies or an equivalent alternate method of sterilization.

(b) Communicable diseases.

1. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

a. Staff of facility have completed a training program approved by the cabinet.

b. The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

c. The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

2. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(c) Use of restraints or protective devices.

1. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care.

2. No form of restraints or protective devices shall be used except upon written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall

document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(2) Physician services. All patients shall be under the medical supervision of a licensed physician. These services shall include:

(a) Physician's visit for medical evaluation as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical report.

(b) Physician services for medical emergencies available on a twenty-four (24) hour, seven (7) days-a-week basis.

(3) Nursing services. Nursing services shall include:

(a) The establishment of a nursing care plan for each patient. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals and nursing care needs;

(b) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative measures shall be practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measures shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

(c) Administration of medications including oral, rectal, hypodermic, and intramuscular;

(d) Written monthly assessment of the patient's general condition by licensed nursing personnel;

(e) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets;

(f) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(g) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(4) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing. Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or the pharmacist shall review each patient's medical profile monthly. Medications shall be reviewed at least quarterly by the attending or staff physician. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications shall be released to patients on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state-approved training program. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse.

a. The nursing station shall have items required for the proper administration of medications.

b. Medications prescribed for one (1) patient shall not be administered to any other patient.

c. Self-administration of medications by patients shall not be permitted except on

special order of the patient's physician and a predischarge program under the supervision of a licensed nurse.

d. Medication errors and drug reactions shall be immediately reported to the patient's physician and pharmacist and an entry thereof made in the patient's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(5) Personal care services.

(a) All facilities shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(6) Dental services. The facility shall assist patients in obtaining dental services. Conditions necessitating dental services shall be noted and such dental procedures and services provided shall be recorded in the patient's record.

(7) Social services. The facility shall provide or arrange for social services as needed by the patient.

(a) Social services shall be integrated with other elements of the plan of care.

(b) A plan for such care shall be recorded in the patient's record and periodically evaluated in conjunction with the patient's total plan of care.

(c) Social services records shall be maintained as an integral part of case record maintained on each patient.

(8) Activities and therapeutic recreation.

(a) All facilities shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All facilities shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the facility, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. A living or recreation room and outdoor recreational space shall be provided for patients and their guests.

7. The facility shall provide supplies and equipment for the activities program.

8. Reading materials, radios, games and TV sets shall be provided for the patients.

9. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area of private consultation shall be made available.

10. The facility shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety.

(9) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(10) Residential care services. All facilities shall provide residential care services to all patients including: room accommodations, housekeeping and maintenance services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services.

(a) Room accommodations.

1. Each patient shall be provided a standard size bed at least thirty-six (36) inches wide. equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered by the facility as often as is necessary. Patients' personal clothing shall be laundered by the facility unless the patient or the patient's family accepts this responsibility. Patients capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Patient's personal clothing laundered by the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their

working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left-over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

Section 5. Separability. If any clause, sentence, paragraph, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, directly involved in the controversy in which the judgment was rendered.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:220E. Dual licensure of hospitals.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
PURSUANT TO: KRS 216B.040, 216B.105, 216B.107, Executive Order 86-366
EFFECTIVE: July 14, 1986
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. KRS 216B.107 authorizes the dual licensure of acute care hospitals. This regulation provides for the minimum licensure requirements for the operation of licensed acute care hospitals which provide, as an identifiable part thereof, acute, skilled nursing and intermediate care services.

Section 1. Scope of Operations and Services. Hospitals which are issued a dual license in accordance with KRS 216B.107 shall designate a specific number of beds, as an identifiable part, for acute, skilled nursing and/or intermediate care. The identifiable part of a hospital, licensed as dual, shall provide appropriate facilities and services capable of maintaining a combined resident-mix of acute and long-term care patients.

Section 2. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(2) "Unit" means a dual licensure unit.
(3) "Identifiable part" means an entire physically distinct unit consisting of all beds within that unit (such as a separate building, floor, wing or corridor).
(4) "Medical staff" means an organized body of physicians, and dentists where applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.
(5) "Occupational therapist" means a person who is licensed pursuant to KRS Chapter 319A.
(6) "Speech pathologist" means a person who is licensed pursuant to KRS Chapter 334A.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Record Association.
(9) "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.
(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(11) "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.

Section 3. Applicability. (1) General acute care hospitals which have a dual licensure unit shall designate on their application for licensure the location and number of beds to be licensed as dual licensure beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this regulation and shall be subject to approval by the Cabinet for Human Resources.
(2) Licensee. The hospital shall be legally responsible for the operation of dual licensed beds and for compliance with applicable federal, state and local laws and regulations.

Section 4. Administration and Operation. (1) General requirements.
(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.
(b) The hospital shall comply with the requirements of Kentucky's Nursing Home Reform Law pursuant to KRS 216.535 to KRS 216.593 and 900 KAR Chapter 2.
(2) Administrator. The unit within the hospital designated for dual licensure shall have a full-time administrator who is licensed as a nursing home administrator pursuant to KRS Chapter 216A. The administrator shall be responsible for the operation of all dual licensure beds and shall delegate such responsibilities in his/her absence. The administrator of the unit may be the hospital administrator, his/her assistant, or designee.
(3) Administrative records and reports. In addition to the requirements of 902 KAR 20:016, Section 3(3) the following records/reports are required:
(a) The hospital shall maintain a permanent, chronological patient registry, for the dual licensure unit, documenting the following:
1. Date of admission;
2. Name of patient;
3. Attempts to place the patient in any intermediate care facility or skilled nursing facility within the county of residence of the patient or of the hospital or the patient has been refused admission to such facility;
4. Date of transfers within the facility or across levels of care; and
5. Date of final discharge.
(b) The hospital shall require and maintain written recommendations or comments from consultants regarding the unit and its development on a per visit basis.
(c) Unit menu and food purchase records shall be maintained.
(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.
(4) Policies. The hospital requesting dual licensure beds shall meet the requirements of 902 KAR 20:016, Section 3(4) and the additional requirements contained in this section.
(a) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.
(b) Long term care patient care policies. The unit shall have written policies to govern the skilled nursing and intermediate care patients and related medical and other services provided, which shall be developed by the medical staff. Pharmacy policies and procedures shall be developed by the medical staff. The medical staff shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the unit shall have written policies to include:
1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted to the unit;
2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review;

6. Use of restraints;
7. Coordination between nursing staff, medical staff, and business office concerning level of care changes; and
8. Update procedures for reimbursement.

(c) Adult and child protection. The unit shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(d) Missing patient procedures. The unit shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission. The hospital requesting dual licensure beds shall meet the requirements established in 902 KAR 20:016, Section 3(4)(b) and the additional requirements contained in this section.

(a) Patients shall be admitted to dual licensed beds only upon the referral of a physician. The unit shall not admit persons whose care needs exceed its capabilities.

(b) Upon admission the unit shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The unit shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or long term care facility (A current hospital discharge summary containing the above information shall be acceptable.)

(c) If physician's orders for the immediate care of a patient are unobtainable at the time of admission, the unit shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the hospital to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(7) Discharge planning. The hospital shall coordinate its discharge planning program, with the dual licensure unit, to assure continuity of care for patients being transferred to another health care facility, across levels of care, or being discharged to the home.

(8) Transfer procedures and agreements. The hospital requesting dual licensure beds shall meet the requirements of 902 KAR 20:016, Section 3(7) and the additional requirements contained in this section.

(a) The unit shall have written transfer procedures and agreements for the transfer of patients to other health care facilities. Any unit which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer or a patient and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the unit, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(9) Tuberculosis testing.

(a) All hospital personnel shall comply with the tuberculosis testing procedure outlined in 902 KAR 20:016, Section 3(9)(c)1-6.

(b) All hospital patients initially transferred to the dual licensure unit, for the purpose of obtaining acute care, skilled nursing or intermediate care, shall be tested and monitored for tuberculosis in accordance with 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel. The hospital requesting dual licensure beds shall meet the personnel requirements of 902 KAR 20:016, Section 3(9)(a)-(d) and the additional requirements contained in this section.

(a) Health requirements: No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(b) Staffing classification requirements:

1. The unit shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number classification and assignment between the facility and the unit of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The unit shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the unit. If the director of nursing has administrative responsibility for the unit, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing unit shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the medical staff;

f. Coordinating nursing services with other patient care services;

g. Planning and assuring that orientation programs for new nursing personnel and continuing in-service education for all nursing personnel are conducted;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his/her plan shall be reviewed and modified as necessary.

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing.

5. Charge nurse. There shall be at least one (1) registered nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty.

6. Pharmacist. Pharmaceutical services shall be provided to the unit on a full-time, part-time or consultant basis.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a unit with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, person with qualifications other than those described in Section 4(10)(b)7a of this regulation may be assigned duties appropriate to their training and experience.

8. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by, and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the unit, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the unit does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(c) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for non-professional nursing personnel shall begin during the orientation period, to include demonstration, practice, and supervision of simple nursing procedures applicable in the individual unit. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one from outside the unit, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(11) Medical records. The hospital requesting dual licensure beds shall meet the medical

records requirements of 902 KAR 20:016, Section 3(11), and the additional requirements contained in this subsection.

(a) Name and telephone number of patients' personal physician.

(b) Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

(c) Nursing supervisors written assessment of the patient's monthly general condition.

(d) Changes in patient's response to the activity and therapeutic recreation program.

Section 5. Provision of Services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4 and the additional requirements contained in this section.

(1) Medical staff/physician services. The hospital requesting dual licensure beds shall meet the medical staff requirements of 902 KAR 20:016, Section 4(1) and the additional requirements contained in this subsection.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients requiring skilled nursing care shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) Patients requiring intermediate nursing care shall be evaluated by a physician as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical record.

(2) Nursing services. The hospital requesting dual licensure beds shall meet the nursing service requirements of 902 KAR 20:016(2) and the additional requirements contained in this subsection.

(a) Patient care plan. A written patient care plan shall be developed and maintained for each patient by the nursing staff in coordination with the attending physician.

1. Plan indicates the type of care to be provided, goals to be accomplished and who is responsible for each element of care.

2. Patient care plan is reviewed and updated as necessary by all professional personnel.

(b) Administration of medications including oral, rectal, hypodermic, and intramuscular.

(c) Written monthly assessment of the patient's general condition by licensed nursing personnel.

(d) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets.

(e) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(f) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(g) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(h) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative nursing measure shall be taught to all nursing personnel and practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measure shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

6. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary; and

7. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his/her evaluation of patients by applying muscle, nerve, joint, and functional ability tests; and/or

b. Treating patients to relieve pain, develop

or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders; and/or

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests; and/or

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the unit such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services.

(a) All dual licensure units shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the unit shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with toothbrushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(5) Dental services. The unit shall assist patients to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(6) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(7) Patient activities and therapeutic recreation.

(a) All dual licensure units shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of systems of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All dual licensure units shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised

activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the unit, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. The unit shall provide supplies and equipment for the activities program.

7. Reading materials, radios, games and TV sets shall be provided for the patients.

8. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area for private consultation shall be made available.

9. The unit shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety;

(8) Transportation:

(a) If transportation of patients is provided by the unit to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The unit shall arrange for appropriate transportation in case of medical emergencies.

(9) Pharmaceutical services. The hospital requesting dual licensure beds shall meet the pharmaceutical requirements outlined in 902 KAR 20:016, Section 4(5) and the additional requirements contained in this subsection.

(a) Medication services. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaluation pursuant to Section 5(1)(b)-(c) of this regulation. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

(b) Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314). Each dose administered shall be recorded in the medical record.

1. The nursing station shall have readily available items necessary for the proper administration of medications.

2. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

3. Medications prescribed for one (1) patient shall not be administered to any other patient.

4. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

5. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

6. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff, (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

(c) Labeling and storing medications.

1. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

2. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

3. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

4. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

5. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

(10) Dietary services. The hospital requesting dual licensure beds shall meet the dietary services requirements outlined in 902 KAR 20:016, Section 4(3) and the additional requirements contained in this subsection.

(a) Nutritional needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex, and activity, and in accordance with physician's orders.

(b) Serving of food. When a patient cannot be

served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

1. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

2. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

Section 6. Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity: four (4) patients;

(b) Patient rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall. Not less than a four (4) foot space shall be provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms.

(2) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the licensure agency. Al least two (2) rooms per nursing unit shall be designed for single person occupancy (one (1) bed) and shall have private toilet rooms with bath. At least sixty (60) percent of the beds shall be located in rooms designed for one (1) or two (2) beds.

(3) Patient's dining, TV viewing and recreation areas:

(a) The total areas set aside for these purposes shall be adequate to meet the needs of the facility's dual licensure program.

(b) Storage shall be provided for recreational equipment and supplies (e.g., wall cabinets and closets).

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation in order to have sufficient authority for the declaring of a maximum weekly benefit rate. Therefore, in order to properly establish a maximum weekly unemployment insurance rate for the year beginning July 1, 1986, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation will not suffice because the correct weekly benefit amount would not be declared in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS 13A.100.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Employment Services

903 KAR 5:270E. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
PURSUANT TO: KRS 194.050, 341.380
EFFECTIVE: June 16, 1986
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1986 [1985], and prior to July 1, 1987 [1986]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1985 [1984] was 13,894,786 [13,455,245];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,157,899 [1,121,070];

(3) The "total wages" reported by subject employers for the calendar year of 1985 [1984] was $19,399,262,305 [$18,453,034,358];

(4) The "average weekly wage" for the calendar year of 1985 [1984] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $322.19 [$316.54];

(5) Fifty-five (55) percent of the average weekly wage of $322.19 [$316.54] for the calendar year of 1985 [1984] was $177.20 [$174.10];

(6) However, the "trust fund balance" as of December 31, 1985 [1984], was $76,598,469.22 [zero, (the outstanding loan from the Federal Unemployment Trust Fund was $11,067,384)] and KRS 341.380 states that if the trust fund balance on December 31 is less than $120,000,000 the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate; and

(7) The prior year's maximum weekly benefit rate was $140.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1986 [1985], and prior to the first day of July, 1987 [1986], is determined to be $140.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 6, 1986
FILED WITH LRC: June 16, 1986 at 2 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to

implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division for Field Services

905 KAR 1:180E. DSS policy and procedures manual.

RELATES TO: KRS 194.030(8), 194.060, 199.011 to 199.375, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208 and 209
PURSUANT TO: KRS 194.050, 199.420, 200.080, 209.030
EFFECTIVE: July 15, 1986
NECESSITY AND FUNCTION: P.L. 97-35, "Block Grants for Social Services - Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this manual is to implement a statewide social services program.

Section 1. DSS Policies and Procedures Manual. For the purpose of implementing and enforcing those sections of the Kentucky Revised Statutes relating to social service programs for children and adults that apply to the Department for Social Services, the Secretary of the Cabinet for Human Resources hereby adopts, by reference, the Department for Social Services' Policy and Procedural Manual as revised through July 1 and July 11 [April], 1986, as the current policies and procedures of that department. The manual contains policies and procedures relating to management procedures, adult services, support services, family and children's services, and youth services. The Department for Social Services' Policy and Procedures Manual may be reviewed in any departmental field office located in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, during regular working hours.

Section 2. Summary of Amendment. (1) In Chapter I, Management Procedures, Section A.4, Receiving Report - Impressed Cash Vouchers, strike the entire section and substitute in lieu thereof the entire revised Section A.4, dated 7/86, which transmits revised instructions and form DSS-110 necessary for reimbursement of foster care expenditures as they relate to new rates as approved by the General Assembly to become effective July 1, 1986.

(2) In Chapter II, Adult Services, Section A, Adult Protective Services, strike pages 1 and 2, and pages 23 through 27, dated 12/82, along with forms 291, 292 and 292A dated 8/82, and substitute in lieu thereof pages 1 and 2, and pages 39 through 57, dated 7/86, along with forms 291 and 292 dated 7/86. These revisions reflect changes in the definitions of "adult" and "exploitation," and incorporates into the manual the forms and procedures necessary for the implementation of the automated Adult Protection Reporting System which is to begin operation on July 1, 1986.

(3) In Chapter IV, Family and Children's Services, Section C, Foster Care, strike entire section and insert in lieu thereof entire revised section dated July 1, 1986. The major changes made in this section are as follows:

(a) Incorporates foster care rate changes authorized for fiscal year 1987;

(b) Minor changes in reporting foster care information;

(c) Revises foster care contracts to reflect new per diem rates;

(d) Sets up procedures for compliance with Foster Care External Review Boards; and

(e) Defines the roles of the Recruitment and Certification staff.

(4) In Chapter I, Management Procedures, Section A.5, Fair Hearing Procedures, Civil Rights Discrimination and Service Complaints, strike the entire section dated 10/83 and 5/84, and substitute in lieu thereof Chapter I, Management Procedures, A.5, Fair Hearing Procedures, Civil Rights Discrimination and Service Complaints, dated 7/86. This material revises the method of handling civil rights/service compliants to conform with federal regulations (45 CFR 205.10) and designates that all hearings shall be conducted by the Quality Assurance Branch.

(5) In Chapter I, Management Procedures, incorporate Section A.6, Preventative Assistance, dated 7/86, which establishes guidelines for the utilization of emergency funds granted by the 1986 General Assembly.

(6) In Chapter I, Management Procedures, incorporate Section A.7, Aging Section, Complaint Hearing, dated 7/86, which sets forth guidelines for the conduct of hearings as they relate to contracts with the Area Agencies on Aging, service provides and applicants to provide service, and service recipients/applicants. [In Chapter V, Youth Services, Community Based, Revocation of Supervised Placement, strike pages 20 through 23 dated 6/84, and insert in lieu thereof Chapter V, Youth Services, Community Based, Revocation of Supervised Placement, pages 20 through 23 dated 4/86 which revises the procedures for the revocation hearings process. Revisions include: changing the definition of "Chairperson;" changing Juvenile Court Liaison to Juvenile Specialist and Field Office Supervisors to Family Services Office Supervisor; transportation shall be provided by appropriate staff if another source of transportation is unavailable; and rather than the Deputy Commissioner and Director of the Division of Program Management being standing chairpersons, the Commissioner will name one (1) member of the Hearing Board as Chairperson.]

Section 3. Repeals. The following regulations are hereby repealed: 905 KAR 7:020, Procedural manual for day treatment; 905 KAR 7:040, Continuum of care for children in residential facilities; 905 KAR 7:050, Group home procedural manual; 905 KAR 7:070, Children's residential staff training requirements; 905 KAR 7:080,

Children's treatment services facility manual; 905 KAR 7:110, Northern Kentucky Treatment Center policy and procedures manual; 905 KAR 7:120, Lake Cumberland Boys' Camp policy and procedure manual; 905 KAR 7:130, Morehead Treatment Center policy manual; 905 KAR 7:140, Central Kentucky Treatment Center policy manual; 905 KAR 7:150, Green River Boys' Camp policy manual; 905 KAR 7:160, Woodsbend Boys' Camp policies manual; 905 KAR 7:170, Cardinal Treatment Center policy and procedural manual; 905 KAR 7:180, Rice-Audubon policy and procedural manual; 905 KAR 7:190, Lincoln Village policy and procedural manual; 905 KAR 7:200, Re-Ed Treatment policy and procedural manuals; 905 KAR 7:210, Central Kentucky Re-Ed Center policy and procedural manual; 905 KAR 7:220, Owensboro Treatment Center. [905 KAR 1:190, Conduct of hearings for revocation of supervised placement, is hereby repealed.]

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 11 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Program Management

905 KAR 3:030E. Matching requirements.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1986
NECESSITY AND FUNCTION: The Omnibus Budget Reconciliation Act of 1981 substantially reduced the amount of federal funds the Commonwealth receives through the Title XX "Social Services Block Grant" and the "Community Services Block Grant" established under said Reconciliation Act of 1981. Matching requirements are being established to encourage and assure local support and sharing in service provision; and to reduce, to the extent possible, the full impact of federal reductions in funds.

Section 1. Definitions. As used in this regulation, the following terms shall have the meanings as set forth below:
(1) "Certified expenditures" means any cash expenditure incurred by the local provider of services through the Social Services or Community Services Block Grant funds when such expenditures are determined to be allowable, reasonable, and necessary under applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants. Such certified expenditures may be incurred by the provider of service whether public or private non-profit, or may be certified on behalf of the provider by a third party which may also be a public or private non-profit organization.
(2) "In-kind contributions" means property or services which directly benefit the service purchased; which are contributed by the provider or a non-federal third party without expenditure by the local provider; and would have been an allowable, reasonable and necessary cost in accordance with applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants if purchased by the provider.
(3) "Local matching funds" means any cash received from a local organization or individual, local taxes, state funds received by local agencies, or federal general revenue sharing funds received for use by local governments. No other federal funds shall be allowed as matching and no other funds identified in this regulation for match shall satisfy this requirement if used to match other state or federal funds.

Section 2. All contractors who provide social services funded by Title XX - Social Services Block Grant, P.L. 97-35, shall be required to provide matching on a seventy-five (75) percent/twenty-five (25) percent ratio. Local match may be cash, certified expenditures, or in-kind contributions. In cases where it is advantageous to the state to provide the local match in order to obtain a needed service, the state may provide the local match on behalf of the local agency. [Local match shall be cash in the form of certified expenditures except that in-kind contributions are authorized for in-home services for the elderly and the State Department of Health Services may provide state fund cash match for mental health/mental retardation services.] The local match shall consist of one (1) dollar for every three (3) dollars in federal funds expended for in-kind in the same ratio.

Section 3. Community Services Block Grant. Contractors utilizing Community Services Block Grant funds, P.L. 97-35, shall meet the same requirements set forth in Section 2, except that the matching ratio shall be eighty (80) percent federal and twenty (20) percent local matching funds, and in-kind contributions may be used for all CSBG contracts.

Section 4. (1) Certified expenditures for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or a third party when certified by a third party. Third party entities shall enter a contractual agreement with the provider as to the type of expenses and methods of documentation to be used for all the certified expenditures. The contractual agreement shall include at least a requirement to make records available for audit by the provider, Cabinet for Human Resources, and/or entities authorized by the Cabinet for Human Resources to audit said records. The provider may be subject to disallowances and reimbursement to the Commonwealth if such expenditures are not documented by the provider

or the third party.

(2) In-kind contributions for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or third party. Values placed on in-kind contributions shall be based on 45 CFR Part 74, Subpart G, Cost Sharing or Matching, as printed June 9, 1981 and as subsequently amended, except as otherwise authorized in this regulation.

(3) State fund cash match may be inter-accounted to the Cabinet for Human Resources' Department for Social Services for disbursement with the federal funds matched. Inter-accounted funds shall require documentation sufficient to determine that the requirements of this regulation are met.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 26, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:031E. Payments for home health services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1985
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies: The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services, taking into consideration the upper limit shown in Section 2 of this regulation. Payments made at the interim rate will be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this regulation. The Medicaid final rates may not exceed federally established upper limits for Medicare.

Section 2. Payments may not exceed a prospective upper limit which will be set at 105 percent of the weighted median of the array of allowable per visit costs for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. The array shall be based on latest available annual cost report data with costs trended through June 30; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. For the July 1, 1985 through June 30, 1986 rate year, the upper limit shall be effective for services provided after August 2, 1985. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of <u>May 31</u> [April 30] preceding the rate year.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

907 KAR 1:036E. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 3, 1986
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled

nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised July 1 [April 14], 1986, which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (non-hospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 135 percent of 102 percent of the median of allowable trended and indexed costs of all other SNFs, however, such upper limit shall not exceed 102 percent of the median of the array of allowable trended and indexed costs of hospital based SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum payment amount for the prospective uniform rate year will be at 102 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for freestanding SNFs and basic ICFs, except that the maximum (upper limit) shall be set at 110 percent of the median of the array.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy services which shall be paid on a prospective rate basis. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and non-legend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of

the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess <u>five (5)</u> [twenty (20)] percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for capital costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multi-level facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Department for Medicaid Services shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval

of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless such costs are incurred by administrators or owners.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(12) Each facility shall maintain and make available such records (in a form acceptable to the cabinet) as the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited onsite access for accounting, auditing, medical review, utilization control and program planning purposes.

(13) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(14) The cabinet shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the cabinet will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying cost to be used in setting the prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(15) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(16) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(17) The cabinet may develop and/or utilize methodology to assure an adequate level of care.

Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Each ICF which admits a recipient from an SNF during the period of September 1, 1985 through January 31, 1986 shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered such recipient, subject to the following conditions:

(a) The recipient must meet SNF patient status criteria as of August 31, 1985 only because of non-availability of an ICF bed, where the recipient is on the waiting list of an ICF; and

(b) The incentive payment may be paid for more than ninety (90) covered days of care only if all such days are prior to February 1, 1986.

(20) When a recipient in a SNF changes patient status (from SNF to ICF) on or after February 1, 1986 and is admitted to an ICF within the permitted transfer period for the recipient (i.e., while the recipient still qualifies for coverage at the skilled rate), the ICF shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered the recipient; such incentive payment shall be paid for no more than ninety (90) days of care.

(21) The incentive payment referenced in subsections (19) and (20) of this section shall be paid without regard to maximum payment limitations shown elsewhere in this regulation.

(22) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment will be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient must be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient must have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient must meet ICF patient status criteria, and the appropriate representative of the Department for Social Services must certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however, the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

(23) SNF's which on February 1, 1986 continued to care for recipients who were classified as meeting SNF patient status criteria as of August 31, 1985 only because of non-availability of an ICF bed, where the recipient is on the waiting list of an ICF, may receive the usual SNF rate for those recipients subject to the following transitional reimbursement standards and criteria:

(a) The facility must file a letter of intent with the Cabinet for Human Resources, Office of the Secretary, 275 East Main Street, Fourth Floor, Frankfort, Kentucky 40621 by January 31, 1986 (receipt in the cabinet is required) for downward conversion of the bed(s) in which the recipient(s) is residing.

(b) Any facility which files a letter of intent must submit to the Certificate of Need Authority (CONA) an appropriate certificate of need application for downward conversion of the skilled bed(s), no later than February 14, 1986, in order for the transitional reimbursement payments to continue.

(c) Payment under this transitional reimbursement provision shall continue only until such time as the Certificate of Need Authority (CONA) has acted on the application and any appropriate licensure action has been effected.

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to

non-profit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 7-1-86 [8-3-85])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$28.99 & below	$.92	$.58
29.00 - 29.99	$.86	$.50
30.00 - 30.99	$.78	$.41
31.00 - 31.99	$.70	$.32
32.00 - 32.99	$.61	$.21
33.00 - 33.99	$.51	$.09
34.00 - 35.58 [35.06]	$.35	-

Maximum Payment $35.58 [35.06]

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 7-1-86 [8-3-85])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$69.99 & below [65.99]	$1.38	$.87
70.00 - 75.99 [66.00 - 71.99]	$1.29	$.75
76.00 - 81.99 [72.00 - 77.99]	$1.18	$.62
82.00 - 87.99 [78.00 - 83.99]	$1.06	$.47
88.00 - 93.99 [84.00 - 89.99]	$ .92	$.31
94.00 - 99.99 [90.00 - 95.99]	$ .76	$.13
100.00 - 106.81 [96.00 - 102.59]	$ .53	-

Maximum Payment $106.81 [102.59]

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 7-1-86 [8-3-85])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$ 38.99 & below	$.92	$.58
39.00 - 40.99	.86	.50
41.00 - 42.99	.78	.41
43.00 - 44.99	.70	.32
45.00 - 46.99	.61	.21
47.00 - 48.99	.51	.09
49.00 - 51.04 [50.31]	.35	-

Maximum Payment $51.04 [50.31]*

*The maximum payment for hospital based skilled nursing facilities is set at $68.90 [67.91].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 percent of the median is a lower dollar amount than has been currently set.

Section 5. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement and Contracts [Medical Assistance], a re-evaluation of the point at issue. This request must be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services [Social Insurance], a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division of Reimbursement and Contracts [Medical Assistance]. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts [Medical Assistance], one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel [Division of Management and Development, Department for Social Insurance]. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the

resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 6. Definitions. For purposes of Sections 1 through 6 of this regulation, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including indwelling catheters and syringes, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(g) Ventilator therapy services, subject to the coverage limitations shown in the Reimbursement Manual.

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985 and thereafter.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after July 1, 1986.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986
FILED WITH LRC: July 3, 1986 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for

Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

907 KAR 1:045E. Payments for mental health center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1986
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to Kentucky based (in-state) providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs (utilizing the latest audited annual cost report or unaudited report if an audited report is not available) not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year [and indexed for the rate year,] so as to more accurately approximate actual costs which will be incurred during the year. (If an unaudited report is used, cost will not be adjusted based on audit.)

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement," (revised July 1, 1986 [August 3, 1985]) developed and issued by the cabinet, (incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein), supplemented by the use of Title XVIII reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, [membership dues,] travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $15,000 total valuation annually (unless such excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

(4) The prospective rate shall not exceed 105 percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits may be settled in the usual manner, i.e., through recoupment or withholding.

(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 community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for such services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

Section 4. Reimbursement of Out-of-State Providers. The cabinet shall make payment to out-of-state mental health center providers who are appropriately licensed, participate with their state's Title XIX Medicaid Program, and have met the Kentucky Medical Assistance Program conditions of participation. The payment rate will be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of

service in effect for Kentucky providers.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with House Bill 334.

MARTHA LAYNE COLLINS, Governor
E. AUSTIN, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

907 KAR 1:055E. Payments for primary care center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1986
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325, 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 General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1986 [1985], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.

(6) During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

(7) The amount of any allowable incentive payment determined pursuant to the policy specified in Section 1(4) of this regulation may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby primary care providers are 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 will 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 primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.
(5) Interim payments due the primary care center 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 is not permitted. When a primary care center elects to participate as such in the medical assistance program it may 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 sub-units of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.

AS AMENDED

GENERAL GOVERNMENT CABINET
Department of Military Affairs
(As Amended)

106 KAR 1:050. Educational encouragement fund.

RELATES TO: KRS 38.500
PURSUANT TO: KRS 13A.350
EFFECTIVE: July 2, 1986
NECESSITY AND FUNCTION: KRS 38.500 established the Kentucky National Guard Educational Encouragement Fund and authorized the Adjutant General to make rules and regulations for the administration of the fund. This regulation provides policy, procedure and qualification requirements.

Section 1. Purpose. The purpose of the education encouragement fund is to:
(1) Encourage voluntary membership and retention in the Kentucky National Guard;
(2) Improve the educational level of the guard's members; and
(3) Benefit the state as a whole, by virtue of subsections (1) and (2) of this section.

Section 2. Responsibilities. (1) The Adjutant General of Kentucky shall be responsible for the overall policies, guidance, administration, implementation and proper utilization of the Educational Encouragement Fund Board.
(2) The Educational Encouragement Fund Board, hereinafter referred to as the board, shall be charged with administering the fund.
(3) The public affairs officer, Frankfort Headquarters, shall be responsible for initiating and maintaining an active publicity program, designed to promote the recruiting and retention incentive offered by the educational encouragement fund.
(4) National Guard Unit Commanders shall be responsible for keeping members of their command informed of the program, submission and verification of applications, and monitoring military type administrative actions (such as discharge/resignations) for the Adjutant General which could result in a change in status thus requiring forfeiture/repayment of fund benefits by its members. Change in status of a member receiving benefits shall include the following:
(a) Resignation or discharge from the guard.
(b) Drops out of school, with or without just cause.
(c) Is expelled or suspended from school.
(d) Receives an unsatisfactory drill attendance or performance report which results in not being in good standing.
(e) Member receives benefits and fails to serve the one (1) year obligation.
(5) Members of the National Guard who are recipients of funds offered by this program shall be responsible for notifying his/her Unit Commander and/or the Adjutant General of any change in status which would affect his/her entitlement thereto.

Section 3. Definitions. (1) "Matriculation" means enrollment or admission costs which may include tuition.
(2) "Tuition" means the charge or fee that an institution normally charges for instruction.
(3) "Acceptable school" means those universities, colleges or schools enumerated in Appendix A. Copies of Appendix A can be obtained from the Department of Military Affairs, Frankfort, Kentucky 40601.
(4) "Proprietary school" means those business-oriented schools that are licensed by the State Board of Proprietary Education and are approved by the Kentucky Educational Encouragement Fund Board.
(5) "Good standing" means any active member of the Kentucky National Guard endorsed by his commander as successfully attending and participating in the required training program. A member may be considered "not in good standing" in cases where criminal or military charges affect the member's ability to perform his/her duties with the Kentucky National Guard.

Section 4. Benefits. (1) Subject to the availability of funds, the benefits provided

shall consist of a monetary grant for full-time or part-time enrollment not to exceed fifty (50) percent of tuition or matriculation fees, or $250 per term and in no event to exceed $750 within a twelve (12) month period to qualifying members of the Kentucky National Guard.

(2) Benefits shall be payable to qualifying members attending institutions as listed in Appendix A, or others approved by the Educational Encouragement Fund Board.

(3) The Educational Encouragement Fund Board may authorize benefits payable for the following periods of study:

(a) Semester;
(b) Quarter;
(c) Summer terms; or
(d) Others, as approved by the board.

Section 5. Eligibility. (1) Active members of the Kentucky National Guard have benefit eligibility who:

(a) Are members in good standing of the active Kentucky National Guard and commit themselves to service in the Kentucky National Guard for at least one (1) year beyond the end of the term for which benefits are payable.

(b) Have verification of payment of all tuition or matriculation fees for the period of study he/she is requesting benefits for under the fund.

(c) Agree, through contract with the Department of Military Affairs to reimburse the State of Kentucky by and through the department any money paid for him/her from the fund in the event he/she fails to remain a guard member; or is expelled or suspended or quits the program without just cause.

(d) Has a minimum of one (1) year remaining as a member of the guard from the end of the academic period for which educational fund assistance is provided.

(2) The educational assistance benefit shall be applicable to eligible personnel in the following categories:

(a) Students seeking trade or vocational training or education courses for self improvement and advancement.

(b) Students seeking to achieve a two (2) year associate degree.

(c) Students seeking to achieve a four (4) year baccalaureate or graduate degree.

Section 6. Application for Benefits. (1) Eligible individuals in the active Kentucky National Guard interested in submitting applications for benefits of the educational encouragement fund shall comply with the following:

(a) Complete the application, herein filed as Appendix B, and submit to his/her Unit Commander for signature. Both signatures must be present for valid application. Applications may be obtained from the Department of Military Affairs, Frankfort, Kentucky 40601.

(b) Apply, be accepted, and enrolled for credit as a student in any university, college, community college, or vocational education school as a full-time or part-time student.

(c) Pay, or make arrangements for payment of, all educational costs at the time of registration.

(d) Provide the board a stamped "Paid" receipt for payment from the institution for all fees paid at the time of registration.

(e) Must forward the application for (approval/disapproval) consideration prior to the end of the semester for which requesting assistance. No application will be considered by the board beyond the end of the term for which assistance is requested.

(2) Unit Commanders at all levels shall forward applications with endorsements to the Adjutant General's Office as soon as possible.

Section 7. Priority System. Should demand for assistance from the educational encouragement fund exceed the supply of available funds, a priority system will be put into effect by the board.

Section 8. Appeals. Any appeal from the actions or decision of the board in connection with the administration of the educational assistance program shall be submitted in writing, within ten (10) days after receipt of the board's decision, to the Adjutant General, Department of Military Affairs. The decision of the Adjutant General shall be final.

APPENDIX A
LIST OF ACCEPTABLE SCHOOLS

Senior Colleges
Asbury - Wilmore
Bellarmine-Ursuline - Louisville
Berea - Berea
Brescia - Owensboro
Campbellsville - Campbellsville
Centre - Danville
Cumberland - Williamsburg
Easter KY University - Richmond
Georgetown - Georgetown
Kentucky State - Frankfort
Kentucky Wesleyan -- Owensboro
Morehead State - Morehead
Murray State - Murray
Northern KY University - Covington
Pikeville - Pikeville
Spalding - Louisville
Thomas More - Fort Mitchell
Transylvania - Lexington
Union - Barbourville
University of KY - Lexington
University of Louisville - Louisville
Western KY University - Bowling Green
Kentucky Christian College - Grayson

Community Colleges
Ashland - Ashland
Elizabethtown - Elizabethtown
Fort Knox - Fort Knox
Hazard - Hazard
Henderson - Henderson
Hopkinsville - Hopkinsville
Jefferson - Louisville
Lexington Technical Institute - Lexington
Madisonville - Madisonville
Maysville - Maysville
Paducah - Paducah
Prestonsburg - Prestonsburg
Somerset - Somerset
Southeast - Cumberland

Vocational Technical Schools
Ashland Area - Ashland
Bowling Green Area - Bowling Green
Central KY Area - Lexington
Daviess CO Area - Owensboro [Henderson]
Harlan Area - Harlan
Hazard Area - Hazard

Jefferson CO Area-Louisville [Jeffersontown]
Madisonville Area - Madisonville
Mayo Area - Paintsville
Northern KY Area - Covington
Somerset Area - Somerset
[Tilghman Area - Paducah]
West Kentucky - Paducah
Laurel - London
Elizabethtown - Elizabethtown
Northern Campbell CO - Highland Heights
Owensboro - Owensboro
Rowan - Morehead

Junior Colleges
Alice Lloyd - Pippa Passes
Lees - Jackson
Lindsey Wilson - Columbia
Midway - Midway
Southeastern Christian - Winchester
Saint Catharine - Saint Catharine
Sue Bennett - London

Area Vocational Education Centers
Any Area Vocational Education Center funded by the Commonwealth of Kentucky and approved by the Department of Education.

Proprietary Schools
As licensed by the State Board of Proprietary Education.

APPENDIX B

KENTUCKY NATIONAL GUARD EDUCATIONAL ENCOURAGEMENT FUND APPLICATION

(All blanks must be completed before application will be processed)

NAME:_____ RANK:_____ SSN:_____
HOME ADDRESS:_____
(Street) (City) (State) (Zip Code)
Home Phone:_____Work Phone:_____
KyNG Unit:_____
KyNG Entry Date:_____
(day, month, year)
Inclusive dates for current enlistment:
_____ to _____(ETS)
(day, month, year) (day, month, year)
School/institution and address:_____
Term beginning date:_____
Term ending date:_____
Tuition Cost:_____
Were you in the Guard at the beginning of this school term? YES_____ NO_____
How much money have you received through this program in the past 12 months? _____
Will you receive a financial grant other than benefits from this fund? (Excluding VA benefits) _____
If so, what type? _____
What portion of your tuition is paid by grant?
$_____

APPLICANT'S STATEMENT

I, the undersigned, certify that the information on this form is true and correct to the best of my knowledge. I have read the provisions of KY NGR 621-1/KyANGR 53-1 and understand that the awarding of tuition assistance is considered on the basis of availability of funds, the accuracy of this application, the standing of the school and its program, the minimum one year period of service in the Kentucky National Guard beyond the end of the term applied for and I further understand that NO PERSON MAY RECEIVE MORE THAN $250 PER TERM OR $750 DURING A 12 MONTH PERIOD. I hereby promise to reimburse the Commonwealth of Kentucky any monies received by me due to overpayment, leaving the program without just cause, or violation of the regulation/state law which governs the program.

Date:_____ Signature:_____

UNIT COMMANDER'S AFFIRMATION

I certify that the applicant is a member in good standing in the Kentucky National Guard prior to the beginning of the term for which application is made. I further certify that the individual has at least one year of service remaining beyond the term applied for. ETS is correct: Yes_____ No_____

Date:_____ Signature:_____

NOTE: When this application is completed, forward one copy to: Educational Encouragement Fund Board, Boone Center, Frankfort, KY. It must be received prior to the end of term, and bursar's receipt showing payment should be attached (cancelled checks are not sufficient). If payment cannot be made until after the cut-off date, a statement noting when payment will be made must be attached. The application will be considered when the receipt is available.

AGO Ky FM 15-1 (1 Jan 82)
Previous editions are obsolete.

MG. BILLY G. WELLMAN, The Adjutant General
APPROVED BY AGENCY: May 15, 1986
FILED WITH LRC: May 15, 1986 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(As Amended)

807 KAR 5:068. Purchased water adjustment for water districts and water associations.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.012, 278.015, 278.030(1), 278.040(3)
EFFECTIVE: July 2, 1986
NECESSITY AND FUNCTION: KRS 278.030(1) provides that all rates charged by a water utility subject to the jurisdiction of the Public Service Commission shall be fair, just and reasonable. This regulation prescribes the requirements under which a water district or a water association may implement a purchased water adjustment designed to recover the actual costs of water purchased.

Section 1. Water Utility Base Rate. The supplier's base rate in effect immediately prior to the most recent increase shall be considered the base rate.

Section 2. Applications for Change in Base Rate. (1) For purposes of a purchased water adjustment, the supplier's rate as defined in Section 1 of this regulation shall be considered as the base rate for purchased water and any increase or decrease in the base rate shall be considered the changed rate.

(2) In the event there is an increase in the supplier's base rate, the water district or water association shall determine the increased cost of water purchased based on the twelve (12) month period ending within ninety (90) days immediately prior to the effective date of its rate adjustment to its customers. The cost of purchased water shall be calculated at the supplier's base rate and changed rate, as defined in Sections 1 and 2 of this regulation. The difference in costs shall then be divided by the actual number of cubic feet or gallons sold during the same twelve (12) month period, yielding the purchased water adjustment in cents per cubic foot or gallon unit. This adjustment amount shall be added to all the utility's rate schedules on a per unit basis regardless of the customer class.

(3) In the event there is a decrease in the supplier's rate, the purchased water adjustment shall be calculated in the same manner as set out in subsection (2) of this section and its rates reduced accordingly.

(4) In the event a water district or water association receives a refund from its supplier for amounts previously paid, the water district or water association shall immediately apply to the commission for authority to make adjustments on the amounts charged customer's bills under this regulation as follows:

(a) The total refund received by the utility shall be divided by the number of cubic feet or gallons of water the utility estimates it will sell to its customers during the two (2) month period beginning with the first day of the month following receipt of the refund, yielding the refund factor to be applied against each cubic foot or gallon of water sold thereafter.

(b) Effective with meter readings taken on and after the first day of the second month following receipt of the refund, the utility will reduce by the refund factor any purchased water adjustment that would otherwise be applicable during the period. The period of reduced purchased water adjustments shall be adjusted, if necessary, in order to most nearly approximate the total amount to be refunded. The water utility shall make full distribution of the refund within two (2) months.

(c) In the event a water utility receives a large or unusual refund, the utility may apply to the commission for a deviation from the procedure for distribution of refunds specified herein.

Section 3. Filings With the Commission. (1) Within twenty (20) days after any such purchased water rate adjustment, the water district or water association shall file with the commission its revised tariff sheets setting forth the adjusted rates and information concerning the water purchases and sales upon which the adjustment was based sufficient to determine the accurateness of the calculations and application of the purchased water adjustment to its rates. Such tariffs and information shall be in substantially the form set forth in subsection (2) of this section. Copies of these forms may be obtained from the commission upon request.

(2) Form of purchased water adjustment filing.

PURCHASED WATER RATE ADJUSTMENT
Pursuant to KRS 278.012 and 278.015

_____
(Name of Utility)

_____
(Date)

_____

_____
(Business Mailing Address)

_____
(Telephone Number)

1.(a) Names of all wholesale suppliers and the base rate and changed rate of each. In the event the water purchased is billed by the supplier on other than a flat rate schedule, the entire rate schedule must be shown. Attach additional sheets if necessary.

Supplier(s)	Base Rate	Changed Rate
(1)		
(2)		
(3)		

(b) A copy of the supplier's notice of the changed rate showing the effective date of the increase is attached as Exhibit _____.

2. Twelve-month Period Upon Which Purchased Water Adjustment is Based

From_____ through_____
Month & Year Month & Year

3. Statement of Water Purchases (Where water is purchased from more than one (1) supplier, purchases from each supplier must be shown separately. Where water is purchased from a supplier through more than one (1) meter and bills are computed individually for each meter, purchases should also be shown separately for each meter.)

Supplier's Name	Gallons Purchased Meter No. 1	Gallons Purchased Meter No. 2
(1)_____		
(2)_____		
(3)_____		
TOTAL		

4. Total Sales for the 12-Months _____

5. Purchased Water Adjustment Factor _____¢ per gallon or cubic foot.

NOTE: Revised tariff sheets must be attached showing rates to be charged by the utility and the effective date of such increased rates.

_____
Signature of Utility Officer

_____
Title

Form for filing Rate Schedules
For _____
Community, Town or City
P.S.C. No. _____

_____ SHEET NO. _____

_____ CANCELLING P.S.C. NO. _____
Name of Issuing Corp.
_____ SHEET NO. _____

CLASSIFICATION OF SERVICE

RATE PER UNIT

DATE OF ISSUE _____ DATE EFFECTIVE _____
ISSUED BY _____ TITLE _____
Name of Officer
Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. _____ dated _____.

Section 4. Orders of the Commission. (1) Within thirty (30) days after the documents required by Section 3 of this regulation are filed, the commission shall enter its order either approving the rates or establishing revised rates.

(2) If the rates contained in the tariff are correct and approved as filed, no further tariff forms will be required to be filed and a stamped copy of the approved tariff sheet(s) shall be returned to the utility for its files. If the rates are incorrect and corrected rates are established by the commission, within thirty (30) days of the date of the commission's order, the utility shall file revised tariff sheet(s) setting out the rates so ordered.

Section 5. Notice to Customers. The water district shall notify its customers of any increase in rates resulting from a supplier increase no later than the rendering of the first bill at the increased rate.

RICHARD D. HEMAN, JR., Chairman
ROBERT M. DAVIS, Secretary
APPROVED BY AGENCY: May 15, 1986
FILED WITH LRC: May 15, 1986 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(As Amended)

815 KAR 20:001. Sections Declared Independent.

RELATES TO: KRS Chapter 318
PURSUANT TO: KRS 318.130
EFFECTIVE: July 2, 1986
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the sovereignty of each section as it relates to other sections of the code. As KRS 446.090 provides for severability of statutes, so does this regulation provide for the severability of plumbing code provisions.

Section 1. Sections Declared Independent. If any part of this code shall be held unconstitutional, the remaining parts shall remain in force, unless the remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that the General Assembly or the department would not have enacted the remaining parts without the unconstitutional part, or unless the remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the intent of the General Assembly. [Each section of this code and every part of each section is hereby declared to be an independent section and part of section and the holding of any section or part of section to be void and ineffective for any cause shall not be deemed to effect any other section or part of sections.]

CHARLES A. COTTON, Commissioner
ROBERT M. DAVIS, Secretary
APPROVED BY AGENCY: May 12, 1986
FILED WITH LRC: May 13, 1986 at 2 p.m.

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:110. School license.

RELATES TO: KRS 317A.060, 317A.090
PURSUANT TO: KRS 317A.050, 317A.060
NECESSITY AND FUNCTION: Each school owner must submit an application to operate a school of cosmetology, furnish proof of financial responsibility, meeting all city, county, and state zoning, building, and plumbing codes.

Section 1. Each person, firm or corporation applying for a license to operate a school of cosmetology must submit an application provided by the board.

Section 2. Each individual owner, or one (1) partner, in the instance of a partnership, or one (1) corporate officer in the instance of a corporation, must submit a financial statement indicating financial assets in the amount of $10,000 for twenty (20) students enrolled and $1,000 for each additional student enrolled.

Section 3. A person having any interest in operating a school must submit a minimum of two (2) character references, proposed copy of

student contract indicating all financial charges to enrolling students, and term of lease for location, if applicable.

Section 4. Application for license to operate a school of cosmetology must be accompanied by an architect's or draftsman's plan of proposed premises drawn to scale, showing the arrangements of the classroom, clinic area, mannequin area, dispensary, reception area, shampoo area, office and any other area of the school, entrance and exits, and placement of equipment.

Section 5. A license to operate a cosmetology school carries the approval of this board and is valid only for the location and person, firm, or corporation named on application and license issued by the board. A school of cosmetology license is never transferable from one location to another or from one person, firm or corporation to another.

Section 6. The owners, firm or corporation operating a school of cosmetology must notify the board in writing twenty (20) days prior to selling, transferring, or changing of ownership and management of a school. Prospective ownership must meet all qualifications of owning a school and have the approval of the board.

Section 7. Following approval of the application to operate a school of cosmetology by the board, the site shall be inspected by a quorum of the board or by at least one (1) member of the board and the board administrator. A final inspection of the premises shall be conducted by the members of the board prior to issuing of license. All schools must comply with city, county, and state zoning laws, plumbing and building codes. The construction or renovation of the proposed school must be completed and a final inspection conducted by the board within twelve (12) months from the date of approval of the site. Any extension of this period of time may be granted at the discretion of the board provided said request is presented, in writing, to the board.

Section 8. Any cosmetology school owner, manager, or instructor who misrepresents facts to the board, to the students, or to the general public concerning any information regarding the school or any student enrolled therein, or in any way violates regulations adopted by this board, will be served notice to show cause before this board, why the school's license and the instructor's license should not be revoked.

Section 9. Any person, establishment, firm or corporation which accepts, directly or indirectly, compensation for teaching persons any branch or subjects of cosmetology as defined in KRS 317A.010 shall be classified as a school and will be required to comply with all the provisions of law and the rules and regulations of this board.

Section 10. The board will not license a correspondence school, nor will the board license any school of cosmetology in an establishment that teaches any other trade, profession or business, excluding vocational training schools.

Section 11. No person who is an owner, partner, stockholder, corporate officer or who has any financial or other interest in the management and control of the school, shall be enrolled in said school as a student.

Section 12. No school of cosmetology shall permit or require students to be in attendance at school more than forty (40) hours in any one (1) week.

Section 13. Any school of cosmetology desiring night classes must, by proper application, be granted permission from the board to operate such classes. Under no condition shall the school operate past 10 p.m. local time.

Section 14. (1) It shall be considered a conflict of interest and therefore impermissible for a member of the board or for an employee of the board to apply for a new school license or to apply for any existing school license under KRS 317A.090 and this regulation. If any member of the board or any employee of the board desires to apply for a new school license or for any existing school license, said board member or employee of the board must submit a letter of resignation to the board no later than thirty (30) days prior to submitting an application for a school license.

(2) The board may choose not to consider any application for a school license submitted by a relative of a member of the board, by a relative of a board employee or by any person with whom a member of the board or a board employee shares a significant financial interest. Failure to make full disclosure to the board as to the exact nature of the relationship between the board member or employee of the board and the applicant may result in denial of approval of licensure.

(3) The provisions of this section shall apply only to applications for licenses approved or filed, licenses issued, or actions of a person serving as a member of the board or as a board employee after June 10, 1986.

CARROLL ROBERTS, Administrator
APPROVED BY AGENCY: June 23, 1986
FILED WITH LRC: July 10, 1986 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled for August 22, 1986, at 2 p.m. The hearing will be held at 314 West Second Street, Frankfort, Kentucky. Contact Carroll Roberts, Administrator.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts
(1) Type and number of entities affected: N/A
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Tiering was not applied as it was not necessary.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Proposed Amendment)

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314.011(7), 314.193(2)
PURSUANT TO: KRS 314.131(1), 314.193(2)
NECESSITY AND FUNCTION: The Nursing Practice Act requires that standards in the performance of advanced registered nursing practice be established by regulation to safeguard the public health and welfare.

Section 1. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the scope and standards of practice statements for each specialty area as developed by the national organizations recognized in 201 KAR 20:056 (American Nurses' Association, The Scope of Practice of the Primary Health Care Nurse Practitioner, 1985 [The Primary Health Care Nurse Practitioner, 1980]; American Nurses' Association, Statement on Psychiatric and Mental Health Nursing Practice, 1976; American Nurses' Association, A Statement on the Scope of Medical-Surgical Nursing Practice, 1980; American Association of Nurse Anesthetists, American Association of Nurse Anesthetists Guidelines for the Practice of the Certified Registered Nurse Anesthetist, 1983; American College of Nurse-Midwives, Functions, Standards and Qualifications, 1983; Nurses' Association of the American College of Obstetricians and Gynecologists and American College of Obstetricians and Gynecologists, The Obstetric/Gynecologic Nurse Practioner, Role Delineation, Role Description and Educational Guidelines, 1984; and the National Association of Pediatric Nurse Associates and Practitioners, Scope of Practice: Pediatric Nurse Associates/Practitioners, 1983) herein incorporated by reference. Said scope and standards of practice statements [standards and functions] were adopted by the board of nursing pursuant to KRS 314.011(7) [(5)(e)] and KRS 314.193(2) [on December 13, 1984]. (A copy of the statements may be reviewed Kentucky Board of Nursing office, 4010 Dupont Circle, Suite 430, Louisville, Kentucky, during business hours, and said statements may be obtained from the national organizations.) In adopting such scopes and standards [and scopes] of practice, the board of nursing may solicit the recommendations of the nurse practice council and other appropriate groups. The advanced registered nurse practitioner shall accept the responsibility, accountability and obligation to practice in accordance with the accepted standards of care as defined by the nursing profession and as stated in KRS 314.011(7).

Section 2. In the performance of advanced registered nursing practice acts, the advanced registered nurse practitioner shall practice in accordance with established protocol and shall seek consultation and/or referral in those situations where practice requirements are not included in the established protocol. The term "established protocol" shall mean a written document jointly approved by the physician and the advanced registered nurse practitioner delineating the areas of practice for the advanced registered nurse practitioner. In delineating the areas of practice in the protocol, the advanced registered nurse practitioner shall conform to the standards of practice of the appropriate national nursing organization incorporated by reference in Section 1 of this regulation.

Section 3. Advanced registered nursing practice does not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

SHARON M. WEISENBECK, Executive Director
APPROVED BY AGENCY: June 3, 1986
FILED WITH LRC: July 10, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 26, 1986 at 1:30 p.m. in Room 447 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Those interested in attending this hearing shall notify the following office in writing by August 21, 1986: Mary A. Romelfanger, Deputy Executive Director, Kentucky Board of Nursing, Suite 430, 4010 Dupont Circle, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon M. Weisenbeck
(1) Type and number of entities affected: Of the total 705 advanced registered nurse practitioner registrations in Kentucky, approximately 200 hold the registration designation of nurse practitioner. This regulation amendment incorporates by reference a newly published national organization's scope of practice statement for nurse practitioners.
(a) Direct and indirect costs or savings to those affected: The proposed amendment will not change cost.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: No effect on existing reporting on paperwork requirements.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing

costs: N/A
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Scope of practice statements are incorporated by reference to the regulation to provide specific information to those affected.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes. Tiering was applied in that each specialty area of advanced registered nurse practice has a specific scope of practice statement incorporated by reference to 201 KAR 20:057.

DEPARTMENT OF AGRICULTURE
(Proposed Amendment)

302 KAR 16:010. Procedure for obtaining a permit for operating amusement rides or attractions.

RELATES TO: KRS 247.232, 247.234
PURSUANT TO: KRS 246.040, 247.232, 247.234, 247.236, 247.990
NECESSITY AND FUNCTION: To establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky.

Section 1. Before operating any amusement ride or attraction in this state the owner or operator of such ride or attraction shall provide to the commissioner a written itinerary showing the location of the first set-up as well as the balance of the Kentucky itinerary as known on the date of notification. Such itinerary shall include the playing dates and location; including street and address number where the set-up is within a city or town. The itinerary shall also include the operating period at each site and shall be delivered to the commissioner at least fourteen (14) days prior to the first scheduled set-up.

Section 2. The itinerary set forth in Section 1 of this regulation shall be updated and submitted to the commissioner when cancellations or additional locations are added to the itinerary in Kentucky for the period covered by the permit.

Section 3. On or before the date of the initial inspection of the calendar year the applicant shall provide proof of liability insurance on each ride or attraction in the amount of $300,000 [$1,000,000] due to all bodily injuries or deaths per occurrence. Such proof of insurance must also provide that the insurer will not cancel such policy without thirty (30) days written notice to the commissioner. Proof of insurance may be either the policy itself or a certified statement issued by the insurer attesting to the above requirements. The proof of insurance shall include a listing of the rides or attractions insured or a statement to the effect that all rides or attractions operated under the supervision of the insured are covered.

Section 4. In lieu of providing proof of liability insurance as set forth in Section 3 of this regulation, if the applicant's amusement ride or amusement attraction is one that is permanently located or erected on a site in this state, such applicant may have the option to provide proof of financial responsibility in the sum of $100,000 on or before the date of the initial inspection of the calendar year. "Proof of financial responsibility" shall only be given in the following manner:
(1) By providing proof of liability insurance of $100,000 due to all bodily injuries or death per occurrence in the same manner as set forth in Section 3 of this regulation; or
(2) By submitting a financial statement, certified after audit by a licensed certified public accountant that shall be dated no more than thirty (30) days prior to the receipt of the application and permit fee which shall evidence a net worth of $100,000 or more in assets located in this state; or
(3) By obtaining a bond with surety for $100,000 which names the department, or an individual or institution approved by the department, as trustee; or
(4) By tendering an irrevocable general letter of credit to the department in the sum of $100,000; or
(5) By other proof of financial responsibility in the amount of $100,000 on information provided by the permittee and whose accuracy is sworn to on forms provided by the department.

Section 5. [4.] Each owner or operator of an amusement ride or attraction shall submit to the commissioner or his designated representative an application to be provided by the commissioner. A twenty-five (25) dollar permit fee for each ride or attraction shall accompany the application for a permit. Said permit shall not be issued until each ride or attraction has been inspected and found to be in compliance with KRS 247.232 through 247.236 and applicable regulations. To assure continued safety of amusement rides or attractions, and in addition to the initial inspection provided for pursuant to KRS 247.234 through 247.236, periodic safety inspections may be conducted at various times throughout the term of the permit according to the playing locations as listed in the itinerary.

Section 6. [5.] Upon receipt of proper application and permit fee and upon completion of satisfactory inspection as set forth in Sections 1, 2, 3, [and] 4, and 5 of this regulation the commissoner shall issue a permit in the name of the applicant. Accompanying such permit shall be a seal. The Department Safety Inspector shall affix this seal to a permanent and accessible section of the ride or attraction for which such permit was issued.

DAVID E. BOSWELL, Commissioner
APPROVED BY AGENCY: June 27, 1986
FILED WITH LRC: June 30, 1986 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on the regulation will be held on August 22, 1986, at 2 p.m. in Room 713 of the Capital Plaza Tower. Those interested in attending this hearing shall contact: Thomas M. Troth, General Counsel, Department of Agriculture, Room 705, Capital Plaza Tower, Frankfort, Kentucky 40601. Unless written notification of intent to attend a public hearing is received by the promulgating agency at least five (5) days before the hearing date, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl Dills
(1) Type and number of entities affected: Permanent fixed amusement ride companies in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: Reduction in insurance requirements for both fixed and permanent sites may provide some savings to amusement companies operating in Kentucky.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Fixed sites will need to provide proof of financial responsibility documentation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: N/A
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Most feasible alternative.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Will apply throughout the amusement industry.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:055. Scope and applicability of the KPDES program.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.994
PURSUANT TO: KRS 224.033, 224.045
NECESSITY AND FUNCTION: KRS 224.033 provides that the Natural Resources and Environmental Protection Cabinet may require for persons discharging into the waters of the Commonwealth, by regulation, technological levels of treatment and effluent limitations. KRS 224.034(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d), KRS 224.034(1) requires that any exemptions granted in the issuance of such permits shall be pursuant to 33 U.S.C. Sections 1311, 1312, and 1326(a). Further, KRS 224.034(4) requires that the cabinet shall not impose under any permit issued pursuant to this regulation any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This regulation contains the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, and requirements for disposal into wells, into POTWS and by land application.

Section 1. Applicability of the KPDES Requirements. The KPDES program requires permits for the discharge of pollutants from any point source into waters of the Commonwealth. Compliance with the KPDES program requirements constitutes compliance with the operational permit requirements of 401 KAR 5:005, Section 3(2) and requirements related to the operational permit. Failure to obtain a KPDES permit does not relieve a discharger subject to the KPDES program from complying with the applicable performance standards of that program, 401 KAR 5:050 to 5:085, inclusive.
(1) Specific inclusions. The following are examples of specific categories of point sources requiring KPDES permits for discharges. These terms are further defined in 401 KAR 5:060, Sections 5 through 12:
(a) Concentrated animal feeding operations;
(b) Concentrated aquatic animal production facilities;
(c) Discharges into aquaculture projects;
(d) Discharges from separate storm sewers; and
(e) Silviculture point sources.
(2) Specific exclusions. The following discharges do not require KPDES permits:
(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured in waters of the Commonwealth for the purpose of mineral or oil exploration or development.
(b) Discharges of dredged or fill material into waters of the Commonwealth which are regulated under CWA Section 404 (33 U.S.C. Section 1344).
(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect discharges. Plans or

agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the Commonwealth are eliminated.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 33 CFR Part 151 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR Part 153 (Pollution by Oil and Hazardous Substances) or discharges in compliance with the state hazardous substance contingency plan issued pursuant to KRS 224.877.

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges form concentrated animal feeding operations as defined in 401 KAR 5:060, Section 5, discharges from concentrated aquatic animal production facilities as defined in 401 KAR 5:060, Section 6, discharges to aquaculture projects as defined in 401 KAR 5:060, Section 7, and discharges from silvicultural point sources as defined in 401 KAR 5:060, Section 9.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the director may otherwise require under 401 KAR 5:065, Section 2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act (42 U.S.C Section 300f et seq.), and which are issued under a state or federal Underground Injection Control program; and, underground injections and disposal wells which are permitted by the cabinet pursuant to 401 KAR Chapter 5.

(i) Discharges which are not regulated by the U.S. EPA under CWA Section 402 (33 U.S.C. Section 1342).

Section 2. Prohibitions. No permit may be issued by the director: (1) When the conditions of the permit do not provide for compliance with the applicable requirements of KRS Chapter 224, or regulations promulgated pursuant thereto;

(2) When the regional administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR Section 123.75;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Kentucky and all affected states;

(4) When, in the judgment of the secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For the discharge inconsistent with a water quality management plan or plan amendment approved by EPA;

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Kentucky water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the KPDES regulations and for which the cabinet has performed a pollutant load allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(b) The existing dischargers into that segment are subject to schedules of compliance designed to bring the segment into compliance with Kentucky water quality standards.

Section 3. Variance Requests by Non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this section:

(1) Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be made by the close of the public comment period under 401 KAR 5:075, Section 5. The request shall explain how the requirements of 401 KAR 5:080, Section 3, have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for "non-conventional" pollutants, pursuant to Section 7(1) of this regulation because of the economic capability of the owner or operator, or pursuant to Section 7(2) of this regulation because of certain environmental considerations, must be made as follows. A completed request must be submitted no later than the close of the public comment period under 401 KAR 5:075, Section 5 demonstrating that the applicable requirements of 401 KAR 5:080 have been met.

(3) Innovative technology. An extension under Section 7(3) of this regulation from the deadline in 401 KAR 5:080, Section 1, for best available technology (BAT), based on the use of innovative technology, may be requested no later than the close of the public comment period under 401 KAR 5:075, Section 5, for the discharger's initial permit requiring compliance with applicable effluent limitations. The request shall demonstrate that the requirements of 401 KAR 5:080 have been met.

(4) Thermal discharges. A variance under Section 7(4) of this regulation for the thermal component of any discharge must be filed with a timely application for a permit under 401 KAR 5:060, except that if thermal effluent limitations are established by EPA or are based on Kentucky water quality standards the request for a variance may be filed by the close of the public comment period under 401 KAR 5:075, Section 5.

Section 4. Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in Section 3 of this regulation, the director may notify a permit applicant before a draft permit is issued under 401 KAR 5:075, Section 3, that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the director may require the applicant as a condition of consideration of any potential variance request to submit a request

explaining how the requirements of 401 KAR 5:080 applicable to the variance have been met. The director may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under Section 3(2) of this regulation may request an extension. The extension may be granted or denied at the discretion of the director. Extensions should be no more than six (6) months in duration.

Section 5. General Permits. (1) Coverage. The director may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under CWA Sections 208 and 303 (33 U.S.C. Sections 1288 and 1313);
2. City, county, or state political boundaries;
3. State highway systems;
4. Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget;
5. Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census; or
6. Any other appropriate division or combination of boundaries.

(b) Sources. The general permit may be written to regulate, within the area described in paragraph (a) of this subsection, either:

1. Stormwater point sources; or
2. A category of point sources other than stormwater point sources if the sources all:

a. Involve the same or substantially similar types of operations;
b. Discharge the same types of wastes;
c. Require the same effluent limitations or operating conditions;
d. Require the same or similar monitoring; and
e. In the opinion of the director, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of 401 KAR 5:075.

(b) Requiring an individual permit.

1. The director may require any person authorized by a general permit to apply for and obtain an individual KPDES permit. Any interested person may petition the director to take action under this paragraph. Cases where an individual KPDES permit may be required include the following:

a. The discharger is a significant contributor of pollution as determined by the factors set forth in 401 KAR 5:060, Section 8(3)(b);
b. The discharger is not in compliance with the conditions of the general KPDES permit;
c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
d. Effluent limitation guidelines are promulgated for point sources covered by the general KPDES permit;
e. A Kentucky Water Quality Management Plan containing requirements applicable to such point sources is approved; or
f. The requirements of subsection (1) of this section are not met.

2. Any owner or operator authorized by a general permit may request to the excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 401 KAR 5:060, Section 1, to the director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401 KAR 5:075, Section 5. The request shall be processed under 401 KAR 5:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.

3. When an individual KPDES permit is issued to an owner or operator otherwise subject to a general KPDES permit, the applicability of the general permit to the individual KPDES permittee is automatically terminated on the effective date of the individual permit.

4. A permittee, excluded from a general permit solely because he already has an individual permit, may request that the individual permit be revoked. the permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Section 6. Disposal of Pollutants into Wells, into POTWs or by Land Application. (1) The cabinet may issue permits to control the disposal of pollutants into wells, when necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the Commonwealth because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the Commonwealth, applicable effluent standards and limitations for the discharge in a KPDES permit permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the Commonwealth, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in paragraph (a) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater now to be treated and discharged into waters of the Commonwealth, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 401 KAR 5:080, Section 3, to make them more stringent if

discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = E \times N/T$$

When P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the Commonwealth and T is the total wastewater flow.

(3) Subsection (2) of this section shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) Subsection (2) of this section does not alter a discharger's obligation to meet any more stringent requirements established under 401 KAR 5:065.

Section 7. Variances Available to KPDES Applicants. Consistent with KRS 224.034(1), the variance provisions in this section and in 401 KAR 5:080, Sections 3 and 4, lists, inclusively, those variances available to KPDES applicants.

(1) Economic capability. The director, with the concurrence of EPA, may modify the BAT requirements set out in 401 KAR 5:080, Section 1, for a point source, upon a showing by the owner or operator of that point source, satisfactory to the director that the modified requirement will:

(a) Represent the maximum use of technology within the economic capability of the owner or operator; and

(b) Result in reasonable further progress toward the elimination of the discharge of pollutants.

(2) Environmental considerations.

(a) The director, with the concurrence of EPA, may modify the BAT requirement set out in 401 KAR 5:080, Section 1, for a point source which does not discharge toxic pollutants identified in 401 KAR 5:080, Section 5, conventional pollutants, or the thermal component of that discharge upon a showing by the owner or operator satisfactory to the director that:

1. The modified requirement will result, at a minimum, in compliance with the BPT requirement identified in 401 KAR 5:080 or Kentucky water quality standards, whichever is applicable;

2. The modified requirement will not result in any additional requirement on any other point or non-source point; and

3. The modification will not:

a. Interfere with the attainment or maintenance of that water quality which will assure protection of public water supplies, protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water; and

b. Result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity or teratogenicity, or synergistic propensities.

(b) If an owner or operator of a point source applies for a modification under this section for any pollutant, that owner or operator will be eligible to apply for a modification under subsection (1) of this section with respect to that pollutant only during the same time period as he is eligible to apply for a modification under this section.

(3) Innovative technology.

(a) The director may establish a date for complying with the deadline for achieving BAT set out in Section 1 of 401 KAR 5:080 no later than July 1, 1987, if the owner or operator establishes to the satisfaction of the director the following:

1. That the existing production capacity of the facility will be replaced with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to that facility, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

2. That an innovative control technique will be installed which has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

3. That an innovative system will be installed which has the potential for significantly lower costs than the system which has been determined by the director to be economically achievable.

(b) The innovative system must have the potential for industrywide application.

(c) The director may not modify any requirement under this section which applies to a pollutant on the toxic pollutant list set out at 401 KAR 5:080, Section 5.

(4) Thermal pollution.

(a) The director may impose an alternative effluent limitation for the thermal component of a discharge from a point source if the owner or operator can establish to the satisfaction of the director that the original effluent limitation proposed by the director is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge will be made.

(b) The alternative effluent limitation imposed by the director upon request by the owner or operator will take into account the interaction of the thermal component with other pollutants, and will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water.

Section 8. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors. (1) Definitions. "Requester" means an industrial user or a POTW seeking a variance from the limits specified in a categorical pretreatment standard.

(2) The criteria and standards for evaluating a request for a fundamentally different factors variance shall be pursuant to 401 KAR 5:080,

Section 3.
(3) Application procedure.
(a) Application deadline.
1. Requests for a variance and supporting information must be submitted in writing to the director.
2. In order to be considered, request for variances must be submitted within 180 days after the effective date of the categorical pretreatment standard unless the user has requested a categorical determination.
3. When the user has requested a categorical determination the user may elect to await the results of the category determination before submitting a variance request under this section. When the user so elects, the user must submit the variance request within thirty (30) days after a final decision has been made on the categorical determination.
(b) Contents of submission. Written submissions for variance request shall include:
1. The name and address of the requester;
2. Identification of the interest of the requester which is affected by the categorical pretreatment standard for which the variance is requested;
3. Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are regulated;
4. Identification of the categorical pretreatment standards which are applicable to the industrial user;
5. A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;
6. The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in subparagraph 5 of this paragraph;
7. A description of the industrial user's existing water pollution control facilities;
8. A schematic flow representation of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and
9. A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request.
(c) Deficient requests. The director will only act on written requests for variances that contain all of the information required. Requesters who have made incomplete submissions will be notified by the director that their requests are deficient and unless the time period is extended, will be given up to thirty (30) days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the director, the request for a variance shall be denied.
(d) Public notice. Upon receipt of a complete request, the director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.
1. The public notice will be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice will include mailing notices to:
a. The POTW into which the industrial user discharges;
b. Adjoining states whose waters may be affected; and
c. Designated CWA Section 208 (33 U.S.C. Section 1288) planning agencies, federal and state fish, shellfish and wildlife resource agencies, and to any other person or group who has requested individual notice, including those on appropriate mailing lists.
2. The public notice will provide for a period not less than thirty (30) days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.
3. Following the comment period, the director will make a determination on the request taking into consideration any comments received. Notice of this final decision will be provided to the requester and all persons who submitted comments on the request.
(e) Review of requests by state.
1. When the director finds that fundamentally different factors do not exist, the director may deny the request, and notify the requester of the denial.
2. When the director finds that fundamentally different factors do exist the director will forward the request, with a recommendation that the request be approved, to the enforcement division director of EPA region IV.

Section 9. Pretreatment. (1) Applicability.
(a) This section applies to the following:
1. Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;
2. POTWs which receive wastewater from sources subject to national pretreatment standards; and
3. Any new or existing source subject to national pretreatment standards.
(b) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.
(2) Definitions. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards under the KPDES program.
(a) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in subsection (8) of this section and which has been approved by the director in accordance with subsection (9) of this section.
(b) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the KPDES program.
(c) "Industrial user" or "user" means a source of indirect discharge.
(d) "Interference" means an inhibition or disruption of the POTWs, its treatment processes or operations, or its sludge processes, use or disposal which is a cause of or significantly contributes to a violation of any requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or to the prevention of sewage sludge use or disposal by the POTW in violation of any applicable regulation. An industrial use significantly contributes to a permit violation or prevention of sludge use or disposal whenever the user:
1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by applicable law;
2. Discharges wastewater which substantially differs in nature or constituents from the user's average discharge; or

3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a POTW permit violation or prevent sewage sludge use or disposal in accordance with the POTW's approved method of sludge management.

(e) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with CWA Section 307(b) and (c) (33 U.S.C. Section 1317(b) and (c)) which applies to industrial users. This includes prohibitive discharge limits established pursuant to subsection (4) of this section.

(f) "Pass through" means the discharge of pollutants through the POTW into waters of the Commonwealth in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation. An industrial user significantly contributes to such permit violation when it:

1. Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by applicable law;

2. Discharge wastewater which substantially differs in nature and constituents from the user's average discharge;

3. Knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a permit violation; or

4. Knows or has reason to know that the POTW is, for any reason, violating its final effluent limitations in its permit and that such industrial user's discharge either alone or in conjunction with discharges from other sources, increases the magnitude or duration of the POTW's violations.

(g) "POTW treatment plan" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(h) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means except as prohibited by this section.

(i) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

(3) Local law. Nothing in this regulation is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the cabinet or by EPA.

(4) National pretreatment standards: prohibited discharges.

(a) A non-domestic source introducing pollutants into a POTW shall comply with the general and specific prohibitions set forth in 40 CFR 403.5.

(b) A POTW developing a pretreatment program pursuant to subsection (7) of this section shall develop and enforce effluent limits to implement the prohibitions of paragraph (a) of this subsection pursuant to 40 CFR 403.5.

(c) A POTW without an approved pretreatment program shall, in cases where pollutants contributed by users result in interference or pass-through, and such violation is likely to recur, develop and enforcement specific effluent limits pursuant to 40 CFR 403.5.

(d) If, within thirty (30) days after notice of an interference violation has been sent by the cabinet to the POTW and to persons who have requested notice, the POTW fails to begin appropriate enforcement action, the cabinet may take appropriate enforcement action, pursuant to KRS 224.994 and 224.995.

(e) 40 CFR 403.5 is hereby incorporated by reference, revised as of July 1, 1986 [1984], as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(5) Pretreatment standards: categorical standards.

(a) In addition to the general prohibitions in subsection (4) of this section, all indirect discharges shall comply with national pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Part 401 et seq.). Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(b) Industrial users may request the director to provide written certification on whether an industrial user falls within a particular subcategory. The director will act upon that request in accordance with the procedures in 40 CFR Section 403.6.

(c) Limitations for industrial users will be imposed in accordance with 40 CFR Section 403.6(c) through (e).

(d) 40 CFR Chapter I, Subchapter N (Part 401 et seq.), and 40 CFR Section 403.6 are hereby incorporated by reference, revised as of July 1, 1986 [1984], as published by the Office of the Federal Register, National Archives and Register Service General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(6) Revision of categorical pretreatment standards to reflect POTW removal of pollutants. This subsection provides the criteria and procedures to be used by a POTW in revising the pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW.

(a) Definitions. For the purpose of this subsection:

1. "Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities, or it may be incidental to the operation of the treatment system. Removal does not mean dilution of a pollutant in the POTW. The demonstration of removal shall consist of data which reflect the removal achieved by the POTW for those specific pollutants of concern included on the list developed pursuant to CWA Section 307(a) (33 U.S.C. Section 1317(a)). Each categorical

pretreatment standard will specify whether or not a removal allowance may be granted for indicator or surrogate pollutants regulated in that standard.

2. "Consistent removal" means the average of the lowest fifty (50) percent of the removals measured according to paragraph (d)2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in that paragraph shall be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the director. If the substance is not measurable in the influent, the data may not be used. When the number of samples with concentrations equal to or above the limit of measurement is between eight (8) and twelve (12), the average of the lowest six (6) removals shall be used. If there are less than eight (8) samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal.

3. "Measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

4. "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(b) Revision of categorical pretreatment standards to reflect POTW pollutant removal. A POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may, pursuant to this subsection, revise the discharge limits for a specific pollutant covered in the categorical pretreatment standard applicable to that user. Revisions shall only be made when the POTW demonstrates consistent removal of each pollutant for which the discharge limit in a categorical pretreatment standard is to be revised at a level which justifies the amount of revision to the discharge limit. In addition, revision of pollutant discharge limits in categorical pretreatment standards by a POTW may only be made as follows:

1. Application. The POTW shall apply for, and receive authorization from the director in accordance with subsections (8) and (9) of this section;

2. POTW pretreatment program. The POTW shall have a pretreatment program approved in accordance with subsections (7), (8) and (9) of this section. However, a POTW may conditionally revise the discharge limits for specific pollutants, even though a pretreatment program has not been approved, as follows. These provisions also govern the issuance of provisional authorizations under paragraph (d)2g of this subsection;

a. An industrial user wishing to receive a conditional or provisional revision of categorical pretreatment standards shall submit to the POTW the information required in subsection (10)(b)1 through 7 of this section, except that the compliance schedule is not required when a provisional allowance is requested. The submission shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standards as revised by the POTW.

b. The POTW shall compile and submit data demonstrating removal in accordance with the requirements of paragraph (d)1 through 7 of this subsection. The POTW shall submit to the director a removal report which comports with the signatory and certification requirements of subsection (10)(1) and (m) of this section. This report shall contain a certification by any of the persons specified in subsection (10)(1) of this section or by an independent engineer, containing the following statement: "I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of subsection (6)(d) of this section. Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

c. The POTW shall submit to the director an application for pretreatment program approval meeting the requirements of subsections (7) and (8)(a) or (b) of this section in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's KPDES permit.

d. If a POTW grants a conditional or provisional revision and the director subsequently makes a final determination, after notice and an opportunity for a hearing, that the POTW failed to comply with the conditions in paragraphs (b)2a or b of this subsection, or that its sludge use or disposal practices are not in compliance with the provisions of paragraph (b)4 of this subsection, the revision shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standard as specified by the director. However, the revision will not be terminated when the POTW has not made a timely application for program approval if the POTW has made demonstrable progress towards and has demonstrated and continues to demonstrate an intention to submit an approvable pretreatment program as expeditiously as possible within an additional period of time, not to exceed one (1) year, established by the director.

e. If a POTW grants a conditional or provisional revision and the POTW or director subsequently makes a final determination after notice and an opportunity for a hearing, that the industrial user failed to comply with conditions in paragraph (b)1d of this subsection, including in the case of a conditional revision, the dates specified in the compliance schedule required by subsection (10)(b)7 of this section, the revision shall be terminated by the POTW or the director for the noncomplying industrial user and each noncomplying industrial user to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within the time period specified in that standard. The revision will not be terminated when a violation of the

provisions of this subparagraph results from causes entirely outside the control of the industrial user or the industrial user has demonstrated substantial compliance.

f. The POTW shall submit to the director by December 31 of each year the name and address of each industrial user that has received a conditionally or provisionally revised discharge limit. If the revised discharge limit is revoked, the POTW shall submit the information in paragraph (b)2a of this subsection to the director.

3. Compensation for overflow. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subparagraph a or b of this paragraph. However, this paragraph will not apply when an industrial user can demonstrate that overflow does not occur between the industrial user and the POTW treatment plant.

a. Consistent removal may be claimed if the industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges shall cease or be reduced, or pretreatment shall be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted when the POTW submits to the director evidence that:

(i) All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW shall also demonstrate that it will monitor and verify the data required in subclause (iii) of this clause to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

(iii) All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available upon request by the POTW, director, or regional administrator daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

b.(i) Consistent removal may be claimed if reduced pursuant to the following equation:

$$r_c = r_m = \frac{8760-Z}{8760}$$

Where:

r_m = POTW's consistent removal rate for that pollutant as established under paragraphs (d)1 and (d)2 of this subsection.

r_c = removal corrected by the overflow factor.

Z = hours per year that overflow occurred between the industrial user and the POTW treatment plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

(ii) After July 1, 1983, consistent removal may be claimed only when efforts to correct the conditions resulting in untreated discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75-34" (Program Guidance Memorandum-61) published on December 16, 1975 by EPA Office of Water Program Operations (WH-546). Revisions to discharge limits in categorical pretreatment standards may not be made when efforts have not been committed to by the POTW to minimize pollution from overflows. At a minimum, by July 1, 1983, the POTW shall have completed the analysis required by PRM 75-34 and be making an effort to implement the plan.

(iii) If, by July 1, 1983, a POTW has begun the PRM 75-34 analysis but due to circumstances beyond its control has not completed it, consistent removal, subject to the approval of the director may continue to be claimed according to the formula in subclause (i) of this clause as long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the non-structural cost-effective measures identified by the analysis; and as long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective overflow controls identified in the analysis should federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, consistent removal may, subject to the approval of the director, continue to be claimed according to the formula in subclause (i) of this clausetion when the POTW has completed and the director has accepted the analysis required by PRM 75-34, and the POTW has requested inclusion in its KPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. In considering what is timely implementation, the director will consider the availability of funds, cost of control measures, and seriousness of the water quality problem.

4. Compliance with applicable sludge requirements. A revision shall not contribute to the POTW's inability to comply with its KPDES permit or with any applicable statutes or regulations pertaining to sludge management.

(c) POTW application for authorization to revise discharge limits.

1. An application for authorization to revise discharge limits for industrial users who are or in the future may be subject to categorical pretreatment standards, or approval of discharge limits conditionally or provisionally revised for industrial users by the POTW shall be submitted by the POTW to the director.

2. A POTW may submit an application no more

than once per year for:

a. Any categorical pretreatment standard promulgated in the prior eighteen (18) months;

b. Any new or modified facilities or production changes resulting in the discharge of pollutants which were not previously discharged and which are subject to promulgated categorical standards; or

c. Any significant increase in removal efficiency attributable to specific identifiable circumstances or corrective measures, such as improvements in operation and maintenance practices, new treatment or treatment capacity, or a significant change in the influent to the POTW treatment plant.

3. The director may, however, elect not to review the application upon receipt, in which case the POTW's conditionally or provisionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance with the procedures of subsection (9) of this section, but in no event later than the time of any pretreatment program approval or any KPDES permit reissuance thereafter.

4. If the consistent removal claimed is based on an analytical technique other than the technique specified for the applicable categorical pretreatment standard, the director may require the POTW perform additional analyses.

(d) Contents of application to revise discharge limits. Requests for authorization to revise discharge limits in categorical pretreatment standards shall be supported by the following information:

1. List of pollutants. The POTW shall submit a list of pollutants for which discharge limit revisions are proposed.

2. Consistent removal data. The POTW shall submit influent and effluent operational data demonstrating consistent removal, or other information provided for in paragraph (a)2 of this subsection which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. Representative data: seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

b. Representative data: quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if that data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in paragraph (a)2 of this subsection.

c. Sampling procedures: composite.

(i) The influent and effluent operational data shall be obtained through twenty-four (24) hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least twelve (12) aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to either stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(ii) Twelve (12) samples shall be taken at approximately equal intervals throughout one (1) full year. Sampling must be evenly distributed over the days of the week so as to include non-workdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(iii) Upon the director's concurrence, a POTW may utilize a historical data base amassed prior to the effective date of this subsection provided that such data otherwise meet the requirements of this subparagraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly, and seasonal sewage treatment plant loadings and performance for at least one (1) year.

(iv) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one (1) detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a twenty-four (24) hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: grab. When composite sampling is not an appropriate sampling technique, grab samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one (1) detention period. The detention period is to be based on a twenty-four (24) hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, when the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding fifteen (15) minutes.

e. Analytical methods. Sampling and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136. When 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or when the director, with the concurrence of the administrator, determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director.

f. Calculation of removal. All data shall be submitted to the director. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in

the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, when such data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the director.

g. Exception to sampling data requirement: Provisional removal demonstration. For pollutants which are not currently being discharged, application may be made by the POTW for provisional authorization to revise the applicable categorical pretreatment standard prior to initial discharge of the pollutant. Consistent removal may be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities when the quality and the quantity of influent are similar. In calculating and applying for provisional removal allowances, the POTW shall comply with the provision of paragraph (b)1 through 4 of this subsection. Within eighteen (18) months after the commencement of discharge of the pollutants in question, consistent removal shall be demonstrated.

3. List of industrial subcategories. The POTW shall submit a list of the industrial subcategories for which discharge limits in categorical pretreatment standards will be revised, including the number of industrial users in each subcategory and an identification of which of the pollutants on the list are discharged by each subcategory.

4. Calculation or revised discharge limits. The POTW shall submit proposed revised discharge limits for each of the subcategories of industrial users calculated in the following manner:

a. The proposed revised discharge limit for a specified pollutant shall be derived by use of the following formula:

$$Y = \frac{x}{1-r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard.

r = POTW's consistent removal rate for that pollutant as established under paragraphs (a)2, (d)2, and if appropriate, (b)3b(i) of this subsection (percentage expressed as a decimal).

y = revised discharge limit for the specified pollutant (expressed in same units as x).

b. In calculating revised discharge limits, the revision shall be applied equally to all existing and new industrial users in an industrial subcategory subject to categorical pretreatment standards which discharge that pollutant to the POTWs.

5. Data on sludge characteristics. The POTW shall submit data showing the concentrations and amounts in the POTW's sludge of the pollutants for which discharge limit revisions are proposed and for which EPA, the director or municipality have published sludge disposal or use criteria applicable to the POTW's current method of sludge use or disposal. These data shall meet the following requirements:

a. The data shall be obtained through a composite sample taken during the same sampling periods selected to measure consistent POTW removals in accordance with the requirements of paragraph (d)2 of this subsection. Each composite sample shall contain a minimum of twelve (12) discrete samples taken at equal time intervals over a twenty-four (24) hour period. When a composite sample is not an appropriate sampling technique, grab samples shall be taken.

b. Sampling and analysis shall be performed in accordance with the sampling and analytical techniques described previously in paragraph (d)2e of this subsection.

6. Description of sludge management. The POTW shall submit a specific description of the POTW's current methods of use or disposal of its sludge and data demonstrating that the current sludge use or disposal methods comply and will continue to comply with the requirements of paragraph (b)4 of this subsection.

7. Certification statement. The POTW shall submit the certification statement required by paragraph (b)2b of this subsection stating that the pollutant removals and associated revised discharged limits have been or will be calculated in accordance with this section and any guidelines issued by EPA under CWA Section 304(g) (33 U.S.C. Section 1314(g)).

(e) Procedure for authorizing modification of standards.

1. Application for authorization to revise national pretreatment standards shall comply with subsection (8) of this section and paragraphs (c) and (d) of this subsection. Notice, public comment, and review by the director will comply with subsection (9) of this section.

2. A POTW which has received a construction grant from funds authorized for any fiscal year beginning after September 30, 1978, will only be considered for authorization to modify national standards after it has completed the analysis required by CWA Section 201(g)(5) (33 U.S.C. Section 1288(g)(5)) and demonstrated that modification of the discharge limits in national standards will not preclude the use of innovative or alternative technology. In addition, when sludge disposal or treatment technology is or will be acquired or constructed with construction grant funds, POTWs should refer to 40 CFR Section 35.917(d)(6) and Appendix A to determine the funding eligibility of sludge disposal or treatment facilities.

3. The director shall, at such time as it elects to review the submission, or at the time of POTW pretreatment program approval or KPDES permit reissuance thereafter, authorize the POTW to revise industrial user discharge limits, consistent with the provisions of this section.

4. An industrial user or other interested party may assist the POTW in preparing and presenting the information necessary to apply for authorization to revise categorical pretreatment standards.

(f) Continuation and withdrawal of authorization.

1. Monitoring and reporting of consistent removal. Following authorization to revise the discharge limits in pretreatment standards, the POTW shall continue to monitor and report on, at frequencies and over intervals specified by the director, with the concurrence of the regional administrator, but in no case less than two (2) times per year, the POTW's removal capabilities for all pollutants for which authority to revise the standards was granted. Monitoring and reporting shall be in accordance with subsection (10)(i) and (j) of this section pertaining to pollutant removal capability reports.

2. Re-evaluation of revisions. Approval of authority to revise pretreatment standards will

be re-examined whenever the POTW's KPDES permit is reissued, unless the director, with the concurrence of the regional administrator determines the need to re-evaluate the authority. In order to maintain a removal allowance, the POTW shall comply with all federal, state, and local statutes, regulations, and permits applicable to the POTW's selected method of sludge use or disposal. In addition, where overflows of untreated waste by the POTW continue to occur, the director, with the concurrence of the regional administrator, may condition continued authorization to revise discharge limits upon the POTW's performing additional analysis and/or implementing additional control measures as is consistent with EPA policy on POTW overflows.

3. Inclusion in POTW permit. Once authority to revise discharge limits for a specified pollutant is granted, the revised discharge limits for industrial users of the system as well as the consistent removal documented by the POTW for that pollutant and the other requirements of paragraph (b) of this subsection, shall be included in the POTW's KPDES permit upon the earliest reissuance or modification, at or following program approval, and shall become enforceable requirements of the POTW's KPDES permit.

4. Modification or withdrawal of revised limits.

a. Notice to POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)1 of this subsection or other information available to it, the director determines:

(i) That one (1) or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of this subsection; or

(ii) That such discharge limit revisions are causing or significantly contributing to a violation of any conditions or limits contained in the POTW's KPDES permit. A revised discharge limit is significantly contributing to a violation of the POTW's permit if it satisfies the definitions set forth in subsection (2)(d) or (f) of this section.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

c. Public notice of withdrawal or modification. The director will not withdraw or modify revised discharge limits unless the director shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied and made public in writing, the reasons for withdrawal or modification, and an opportunity is provided for a hearing. Following notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with those limits within a reasonable time not to exceed the period of time prescribed in the applicable categorical pretreatment standard as may be specified by the director.

(7) POTW pretreatment programs: development by POTW.

(a) POTWs required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program. The director may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW affluent limitations, contamination of municipal sludge, or other circumstances so warrant. In addition, a POTW desiring to modify categorical pretreatment standards for pollutants removed by the POTW pursuant to subsection (6) of this section shall have an approved pretreatment program prior to obtaining final approval of a removal allowance, unless conditional approval of a removal allowance is granted by the director pursuant to subsection (6) of this section.

(b) Deadline for program approval. A POTW which meets the criteria of this subsection will receive approval of a POTW pretreatment program no later than three (3) years after the reissuance or modification of its existing permit but in no case later than July 1, 1983.

(c) Incorporation of approved programs in permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in paragraph (b) of this subsection. The POTW's KPDES permit will be reissued or modified to incorporate the approved program conditions as enforceable conditions of the permit.

(d) Incorporation of compliance schedules in permits. If the POTW does not have an approved pretreatment program at the time the POTW's existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three (3) years or July 1, 1983, whichever is sooner, for the approval of the legal authority, procedures and funding required by paragraph (f) of this subsection.

(e) Cause for reissuance or modification of permits. The director may modify or revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program when the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

2. Coordinate the issuance of a CWA Section 201 (33 U.S.C. Section 1281) construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

3. Incorporate an approved POTW pretreatment program in the POTW permit; or

4. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(f) POTW pretreatment program requirements. A POTW pretreatment program shall meet the following requirements:

1. Legal authority. The POTW shall operate pursuant to enforceable legal authority, which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users when such contributions do not meet applicable pretreatment standards and requirements or when such contributions would cause the POTW to violate its permit;

b. Require compliance with applicable pretreatment standards and requirements by industrial users;

c. Control, through permit, contract, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements;

d. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements, including but not limited to the reports required in subsection (10) of this section;

e. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under subsection (12) of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under CWA Section 308 (33 U.S.C. Section 1318);

g. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. A POTW shall seek and assess civil and criminal penalties, as authorized by law. A POTW may enter into contracts with industrial users to assure compliance by industrial users with pretreatment standards and requirements. A contract may provide for liquidated damages for violation of pretreatment standards and requirements and may include an agreement by the industrial user to submit to the remedy of specific performance for breach of contract;

h. Pretreatment requirements enforced through the remedies set forth in subparagraph g of this paragraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or this section. The POTW shall have authority and procedures to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedure to halt or prevent any discharge to the POTW which presents or may present danger to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek enforcement for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the director finds to be insufficient; and

i. Comply with the confidentiality requirements set forth in subsection (11) of this section.

2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index, or inventory of industrial users made under this paragraph shall be made available to the director upon request;

b. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under clause a of this subparagraph. This information shall be made available to the director upon request;

c. Notify industrial users identified under clause a of this subparagraph of applicable pretreatment standards and any other applicable requirements;

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements of subsection (10) of this section;

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. The results of these activities shall be made available to the director upon request;

f. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by subsection (10) of this section, or indicate by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

g. Comply with all applicable public participation requirements. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, during the previous twelve (12) months, were significantly violating applicable pretreatment standards or other pretreatment requirements. For the purposes of this provision, a significant violation is a violation which remains uncorrected forty-five (45) days after notification of noncompliance; which is part of a pattern of noncompliance over

a twelve (12) month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority.

3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the director when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

(8) POTW pretreatment programs and authorization to revise pretreatment standards: submission for approval.

(a) Who approves program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in paragraph (b)1 through 4 of this subsection. This description shall be submitted to the director, who will make a determination on the request for program approval in accordance with procedure described in subsection (9) of this section.

(b) Contents of POTW program submission.

1. The program submission shall contain a statement from the city attorney or a city official acting in a comparable capacity, or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in subsection (7) of this section. This statement shall:

a. Identify the provision of the legal authority under subsection (7)(f)1 of this section which provides the basis for each procedure under subsection (7)(f)2 of this section;

b. Identify the manner in which the POTW will implement the program requirements set forth in subsection (7) of this section including the means by which pretreatment standards will be applied to individual industrial users; and

c. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

2. The program submission shall contain a copy of any statutes, ordinances, regulations, contracts, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

3. The program submission shall contain a brief description, including organization charts of the POTW organization which will administer the pretreatment program. If more than one (1) agency is responsible for administration of the program the responsible agencies shall be identified, their respective responsibilities delineated and their procedures for coordination set forth.

4. The program description shall contain a description of the funding levels and full and part-time manpower available to implement the program.

(c) Conditional POTW program approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of paragraph (b) of this subsection except that the requirements of paragraph (b) of this subsection may be relaxed if the submission demonstrates that:

1. A limited aspect of the program does not need to be implemented immediately;

2. The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(d) Content of removal allowance submission. The request for authority to revise categorical pretreatment standards shall contain the information required in subsection (6)(d) of this section.

(e) Approval authority action. A POTW requesting POTW pretreatment program approval shall submit to the director three (3) copies of the submission described in paragraph (b) of this subsection. Upon a preliminary determination that the submission meets the requirements of paragraph (b) of this subsection the director will:

1. Notify the POTW that the submission has been received and is under review; and

2. Commence the public notice and evaluation activities set forth in subsection (9) of this section.

(f) Notification where submission is defective. If after review of the submission as provided for in paragraph (c) of this subsection, the director determines that the submission does not comply with the requirements of paragraphs (b) or (c) and, if appropriate, (d) of this subsection, the director will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise of the means by which the POTW can comply with the applicable requirements of paragraphs (b) and (c) and, if appropriate, (d) of this subsection.

(g) Consistency with water quality management plans.

1. In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130 and 131, when the CWA Section 208 (33 U.S.C. Section 1288) plan includes management agency designations and addresses pretreatment in a manner consistent with this section. In order to assure such consistency the director will solicit the review and comment of the appropriate CWA Section 208 (33 U.S.C. Section 1288) planning agency during the public comment period provided for in subsection (9) of this section prior to approval or disapproval of the program.

2. When no 208 plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address

pretreatment in a manner consistent with this section, the director will solicit the review and comment of the appropriate 208 planning agency.

(9) Approval procedures for POTW pretreatment programs and POTW revision of categorical pretreatment standards. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and revising categorical pretreatment standards:

(a) Deadline for review of submission. The director will have ninety (90) days from the date of public notice of a submission complying with the requirements of subsection (8) of this section, or if a removal allowance is sought with the requirements of subsection (6) of this section, to review the submission. The director will review the submission to determine compliance with the requirements of subsection (8) of this section, and when a removal allowance is sought, with subsection (6) of this section. The director may have up to an additional ninety (90) days to complete the evaluation of the submission if the public comment period provided for in paragraph (b)1a of this subsection is extended beyond thirty (30) days or if a public hearing is held as provided for in paragraph (b)2 of this subsection. In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(b) Public notice and opportunity for hearing. Upon receipt of a submission the director will commence its review. Within five (5) days after making a determination that a submission meets the requirements of subsection (8)(b) of this section, and when a removal allowance is sought with subsections (6)(d) and (8)(d) of this section, the director will:

1. Issue a public notice of request for approval of the submission:

a. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include mailing notices of the request for approval of the submission to designated CWA Section 208 (33 U.S.C. Section 1288) planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

b. The public notice will provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the submission.

c. All written comments submitted during the thirty (30) day comment period will be retained by the director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the director.

2. The director will also provide an opportunity for the applicant, any affected state, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

a. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in paragraph (b)1b of this subsection and will indicate the interest of the person filing such request and the reasons why a hearing is warranted.

b. The director will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved.

c. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate will be published in the same newspaper as the notice of the original request. In addition notice of the hearing will be sent to those persons requesting individual notice.

3. When the director elects to defer review of a submission which authorizes a POTW to grant conditional revised discharge limits, the director will publish public notice of the election, pursuant to paragraph (b)1 of this subsection.

(c) Director's decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in paragraph (a) of this subsection, the director will approve or deny the submission based upon the evaluation in paragraph (a) of this subsection and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. When the director makes a determination to deny the request, the director will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(d) EPA objection to director's decision. No POTW pretreatment program will be approved by the director if following the thirty (30) day or extended evaluation period provided for in paragraph (b)1b of this subsection and any hearing held pursuant to paragraph (b)2 of this subsection, the regional administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the regional administrator's objections will be provided to the applicant, and each person who has requested individual notice.

(e) Notice of decision. The director will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the director will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The director will identify any authorization to modify categorical pretreatment standards by the POTW for removal of pollutants subject to the pretreatment standards.

(f) Public access to submission. The director will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

(10) Reporting requirements for POTWs and industrial users.

(a) Definition. "Control authority" as it is used in this subsection means the POTW if the POTW's submission for its pretreatment program has been approved or the director if the

submission has not been approved.

(b) Reporting requirement for industrial users upon effective date of categorical pretreatment standards - baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under subsection (5)(a)4 of this section, whichever is later, existing industrial users subject to categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subparagraphs 1 through 7 of this paragraph. When reports containing this information already have been submitted to the director in compliance with the requirements of 40 CFR Section 128.140(b), the industrial user will not be required to submit this information again. New sources shall be required to submit to the control authority a report which contains the information listed in subparagraphs (1) through (5) of this paragraph:

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owner.

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation carried out by the industrial user. This description may include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow in gallons per day to the POTW from regulated process streams. The control authority may allow for verifiable estimates of these flows when justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process;

b. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the control authority. Both daily maximum and average concentration, or mass, where required shall be reported. The sample shall be representative of daily operations;

c. When feasible samples must be obtained through the flow-proportional composite sampling techniques specified in the applicable categorical pretreatment standard. When composite sampling is not feasible, a grab sample is acceptable;

d. When the flow of the stream being sampled is less than or equal to 950,000 liters/day (approximately 250,000 gpd) the user shall take three (3) samples within a two (2) week period. When the flow of the stream being sampled is greater than 950,000 liters/day, the user shall take six (6) samples within a two (2) week period;

e. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of subsection (5) of this section in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula of subsection (5) of this section, this adjusted limit along with supporting data shall be submitted to the control authority;

f. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136. When 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or when the director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods, or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the director;

g. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

h. The baseline report shall indicate the time, date, and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

6. Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified to be a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under subsection (6) of this section, or by a fundamentally different factors variance under Section 8 of this regulation, at the time the user submits the report required by paragraph (b) of this subsection, the information required by paragraph (b)6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance under subsection (6) of this section or by a fundamentally different factors variance under Section 8 of this regulation, after the user submits the report required by paragraph (b) of this subsection, any necessary amendments to the information requested by paragraph (b)6 and 7 of this subsection shall be submitted by the user

to the control authority within sixty (60) days after the modified limit is approved.

(c) Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by paragraph (b)7 of this subsection:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards.

2. No increment referred to in paragraph (c)1 of this subsection shall exceed nine (9) months.

3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the control authority.

(d) Report on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the industrial user which are limited by such pretreatment standards and requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the industrial user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified by a qualified professional.

(e) Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of that pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph (b)4 of this subsection except that the control authority may require more detailed reporting of flows. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. When the control authority has imposed mass limitations on industrial users as provided by subsection (5)(c) of this section, the report required by paragraph (c)1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(f) Notice of slug loading. The industrial user shall notify the POTW immediately of any slug loading, as defined by subsection (4)(a) of this section by the industrial user.

(g) Monitoring and analysis to demonstrate continued compliance. The reports required in paragraphs (b)5, (d), and (e) of this subsection shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All sampling and analyses shall be performed in accordance with procedures established by the administrator pursuant to CWA Section 304(g) (33 U.S.C. Section 1314(g)), and set forth in 40 CFR Part 136. If 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or if the director determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the director.

(h) Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

2. No increment referred to in paragraph (h)1 of this subsection shall exceed nine (9) months.

3. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the director.

(i) Initial POTW report on compliance with approved removal allowance. A POTW which has received authorization to modify categorical pretreatment standards for pollutants removed by the POTW in accordance with the requirements of subsection (6) of this section shall submit to the director within sixty (60) days after the effective date of a pretreatment standard for which authorization to modify has been approved,

a report which contains all information required by subsection (6) of this section. A minimum of one (1) sample per month during the reporting period is required.

(j) Periodic reports by POTW to demonstrate continued compliance with removal allowance. The reports referred to in paragraph (i) of this subsection shall be submitted to the approval authority at six (6) month intervals beginning with the submission of the initial report referred to in paragraph (i) of this subsection unless required more frequently by the director.

(k) Signatory requirements for industrial user reports. The reports required by paragraphs (b), (d), and (e) of this section shall be signed by an authorized representative of the industrial user. An authorized representative may be:

1. A principal executive officer of at least the level of vice president, if the industrial user is a corporation.

2. A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively.

3. A duly authorized representative of the individual designated in subparagraph 1 or 2 of this paragraph if such representative is responsible for the overall operation of the facility from which the indirect discharge originates.

(l) Signatory requirements for POTW reports. Reports submitted to the approval authority by the POTW in accordance with paragraphs (h), (i), and (j) of this subsection shall be signed by a principal executive officer, ranking elected official, or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(m) Provisions governing fraud and false statements. The reports required by paragraphs (b), (d), (e), (h), (i), and (j) of this subsection shall be subject to KRS 224.994(4) and all other state and federal laws pertaining to fraud and false statements.

(n) Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques or methods used; and

e. The results of the analyses.

2. Any industrial user or POTW subject to these reporting requirements shall be required to retain for a minimum of three (3) years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the director, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director.

3. A POTW to which reports are submitted by an industrial user pursuant to paragraphs (b), (d), and (e) of this subsection shall retain such reports for a minimum of three (3) years and shall make such reports available for inspection and copying by the director. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director.

(11) Confidentiality. Any information submitted to the director in accordance with this section may be claimed confidential, as provided in 401 KAR 5:060, Section 2, except that effluent data provided to the director pursuant to this section shall be available to the public without restriction.

(12) Net/gross limitations. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with 40 CFR Section 403.15. 40 CFR Section 403.15 is hereby incorporated by reference, revised as of July 1, 1986 [1984], as published by the Office of the Federal Register, National Archives and Register Service, General Services Administration, and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(13) Upset provision.

(a) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (c) of this subsection are met.

(c) Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user can identify the specific cause of the upset;

2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

3. The industrial user has submitted the following information to the POTW and control authority within twenty-four (24) hours of becoming aware of the upset or if this information is provided orally, a written submission within five (5) days:

a. A description of the indirect discharge and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

c. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(d) Burden of proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(e) Reviewability of agency consideration of claims of upset. In the usual exercise of

prosecutorial discretion, cabinet enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review under KRS 224.081(2). Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(f) User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 11, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on August 21, 1986 at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by August 16, 1986, a written request or the written comments to: Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water - Permit Review Branch, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin
(1) Type and number of entities affected: The proposed amendment makes technical corrections to Section 9. Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The incorporated technical corrections update a citation to 40 CFR Part 403.
(a) Direct and indirect costs or savings to those affected:
1. First year: For the technical corrections, there are no new costs or savings for the affected entities.
2. Continuing costs or savings: Same as (1)(a)1.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect upon competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical corrections can only be implemented through amending the existing administrative regulations. No other alternative is feasible.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The proposed amendment's changes to Section 9 are technical corrections. Thus, tiering is inappropriate for these corrections.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.994
PURSUANT TO: KRS 224.033, 224.045
NECESSITY AND FUNCTION: KRS 224.033 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.034 further empowers the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions.

Section 1. Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all KPDES permits, the director will establish conditions as required on a case-by-case basis under Section 2 of this regulation and 401 KAR 5:070.
(1) Duty to comply.
(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
(b) Specific duties.
1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 revised as of July 1, 1986 [1984], as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington,

D.C. 20402, is hereby incorporated by reference, for toxic pollutants within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES regulations is subject to penalties under KRS 224.994(1) and (4).

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:060, Section 1.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the director, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the director at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.994(4).

(11) Signatory requirement. All applications, reports, or information submitted to the director shall be signed and certified as indicated in 401 KAR 5:060, Section 3. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.994(4).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 401 KAR 5:080, Section 5.

(b) Anticipated noncompliance. The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the date submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR 5:015 and shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which must be reported within twenty-four (24) hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the director in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this regulation.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this subsection, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(13) Occurrence of a bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. This type of bypass is not subject to the provisions of paragraphs (c) and (d) of this subsection.

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (f) of subsection (12), twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.

(d) Prohibition of a bypass.

1. Bypassing is prohibited, and the director may take enforcement action against a permittee for bypass, unless:

a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.

c. The permittee submitted notices as required under paragraph (c) of this subsection.

2. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.

(14) Occurrence of an upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of

paragraph (c) of this subsection are met.

(c) Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, of other relevant evidence that:

1. An upset occurred and that the permittee can identify the cause(s) of the upset;

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as required in paragraph (f) of subsection (12); and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

(d) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this regulation, apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the director as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

a. One hundred micrograms per liter (100 mg/l);

b. Two hundred micrograms per liter (200 mg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 mg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 4(7);

d. The level established by the director in accordance with Section (6)2 of this regulation.

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

a. 500 micrograms per liter (500 ug/l);

b. One (1) milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 4(7); or

d. The level established by the director in accordance with Section 2(6) of this regulation.

(b) POTWs.

1. POTWs shall provide adequate notice to the director of the following:

a. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES regulations if it were directly discharging those pollutants; and

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

2. For purposes of this paragraph, adequate notice shall include information on: the quality and quantity of effluent introduced into the POTWs; and, any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this regulation each KPDES permit will include conditions meeting the following requirements as applicable.

(1) Technology-based effluent limitations and standards; new source performance standards; and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N (Part 401 et seq.), are incorporated by reference as specified in Section 4 of this regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5:080, Section 1(2) will be included, as applicable.

(2) Other effluent limitations and standards of KRS Chapter 224 shall be included as applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the director will institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener clause. For any discharger within a primary industry category, as listed in 401 KAR 5:060, Section 10, requirements under the KPDES regulations will be incorporated as applicable, as follows:

(a) On or before June 30, 1981.

1. If applicable standards or limitations have not yet been promulgated, the permit will include a condition stating that if an applicable standard or limitation is promulgated by EPA and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit will be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit will include those standards or limitations.

(b) After June 30, 1981, any permit issued will include effluent limitations and a compliance schedule to meet the applicable

requirements indicated in Section 1(1)(b) of this regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the reopener clause required by paragraph (a) of this subsection.

(c) The director will promptly modify or revoke and reissue any permit containing the clause required under paragraph (a) of this subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitations guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under KRS Chapter 224 and regulations promulgated pursuant thereto;

(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of CWA (33 U.S.C. Section 1312);

(c) Conform to applicable water quality requirements when the discharge affects a state other than Kentucky;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations in accordance with Section 301(b)(1)(c) of CWA (33 U.S.C. Section 1311(b)(1)c).

(e) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.

(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection will be includedin the permit, if applicable. Limitations will be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations will be included in the fact sheet under 401 KAR 5:075, Section 4.

(a) Limitations will control all toxic pollutants which:

1. The director determines, based on information reported in a permit application under 401 KAR 5:060, Section 4(7) or (11), or in a notification under Section 1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c); or

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the director, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 5:080, Section 1(2)(c).

(6) Notification level. A "notification level" which exceeds the notification level of Section 1(15)(a)1a,b, or c of this regulation, upon a petition from the permittee or on the director's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).

(7) Twenty-four (24) hour reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under Section 3(12)(f) of this regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring requirements. The permit will incorporate, as applicable in addition to Section 1(12) of this regulation, the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor:

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(8) of this regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this regulation.

(b) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(c) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(9) Pretreatment program for POTWs. If applicable to the facility the permit will incorporate as a permit condition requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the KPDES regulations.

(b) Submit a local program when required by and in accordance with 401 KAR 5:055, Section 9, to assure compliance with pretreatment standards to the extent applicable in the KPDES regulations. The local program will be incorporated into the permit as described in 401 KAR 5:055, Section 9. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants

when:

(a) Applicable under KRS Chapter 224 and the KPDES regulations for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible; or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of KRS Chapter 224.

(11) Reissued permits. The permit will include a condition concerning reissued permits, as applicable. When a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit will be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6. This requirement applies to those permits which were issued pursuant to CWA Section 402(a)(1) (33 USC Section 1242(a)(1)), unless one (1) of the following exceptions apply:

(a) If the discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but will not be less stringent than required by the subsequently promulgated effluent limitations guidelines;

(b) If the subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (BCT);

(c) If the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6;

(d) If there is increased production at the facility which results in significant reduction in treatment efficiency, then the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event will permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(12) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed as applicable. Alternatively, the director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants made by the director to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage sludge. Requirements will be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 401 KAR 47:050.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretary of the department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed if applicable.

(16) Navigation. Any conditions that the Secretary of the United States Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5:075, Section 9, will be included as applicable.

(17) Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.

Section 3. Calculating KPDES Permit Conditions. The following provisions will be used to calculate terms and conditions of the KPDES permit.

(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this regulation; with BMPs where limitations are infeasible; and under subsection (8) of this section, limitations on internal waste streams.

(2) Production-based limitations.

(a) In the case of POTWs, permit limitations, standards, or prohibitions will be calculated based on design flow.

(b)1. Except in the case of POTWs or as provided in subparagraph 2a(ii) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

2.a.(i) The director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(ii) For the automotive manufacturing industry only, the director may establish a condition under subparagraph 2a(i) of this paragraph if the applicant satisfactorily demonstrates to the director at the time the application is submitted that its actual production, as indicated in subparagraph 2a(i) of this paragraph, is substantially below maximum

production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

b. If the director establishes permit conditions under subparagraph 2a(i) of this paragraph:

(i) The permit shall require the permittee to notify the director at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the director under subparagraph 2b of this paragraph, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(iii) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:

(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1(2), it is necessary to express the limitation on the metal in the dissolved or valent total form to carry out the provisions of KRS 224.034; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:050, Section 1(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed two (2) kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge.

(6) Mass limitations.

(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If in establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in intake water. (a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in 40 CFR Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The director may waive this requirement if the director finds that no environmental degradation will result.

(e) This section of this regulation does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake

water.

(8) Internal waste streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.

(10) Secondary treatment information. Permit conditions that involve secondary treatment will be written as provided in 401 KAR 5:045.

Section 4. Federal Effluent Limitations and Standards and New Source Performance Standards Incorporations. (1) 40 CFR Chapter I, Subchapter N, Parts 401 et seq., revised as of July 1, 1986 [1984], as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, is hereby incorporated by reference.

(2) Federal Registers incorporated. In addition to subsection (1) of this section, also incorporated by reference are additions, amendments and corrections to this codification, as published in the following Federal Registers:

Industry	40 CFR Part	Federal Register	Date
Aluminum Forming	467	48 FR 49126	10-24-83
		corrected by 49 FR 11629	03-27-84
Battery Manufacturing	461	49 FR 9108	03-09-84
		corrected by 49 FR 13879	04-09-84
		corrected by 49 FR 27946	07-09-84
Coal mining	434	47 FR 45382	10-13-82
		corrected by 48 FR 50321	11-01-83
		amended by 50 FR 41296	10-09-85
Coil coating (Phase I)	465	47 FR 54232	12-01-82
		amended by 48 FR 31403	07-08-83
		amended by 48 FR 41409	09-15-83
		corrected by 49 FR 33648	08-24-84
(Phase II, Canmaking)	465	48 FR 52380	11-17-83
		amended by 48 FR 31403	07-08-83
		corrected by 49 FR 14104	04-10-84
Copper Forming	468	48 FR 36942	08-15-83
		amended by 48 FR 41409	09-15-83
		amended by 50 FR 34242	08-23-85
		amended by 51 FR 7568	03-05-86
Electrical/Electronic Components (Phase 1)	469	48 FR 15382	04-08-83
		amended by 49 FR 5921	02-16-84
(Phase II)	469	48 FR 55690	12-14-83
		corrected by 49 FR 1056	01-09-84
Electroplating (Pretreatment)	413	44 FR 52590	09-07-79
		amended by 48 FR 32462	07-15-83
		corrected by 48 FR 43680	09-26-83
		amended by 48 FR 41409	09-15-83
Inorganic Chemicals (Phase 1)	415	47 FR 28260	06-29-82
		amended by 47 FR 55226	12-08-82
(Phase II)	415	49 FR 33402	08-22-84
		corrected by 49 FR 37594	09-25-84
Iron & Steel Manufacturing	420	47 FR 23258	05-27-82
		corrected by 47 FR 24554	06-07-82
		corrected by 47 FR 41738	09-22-82
		corrected by 48 FR 51773	11-14-83
		amended by 49 FR 21024	05-17-84
		corrected by 49 FR 24726	06-15-84
		corrected by 49 FR 25634	06-22-84
Leather tanning and finishing	425	47 FR 52848	11-23-82
		amended by 48 FR 30115	06-30-83
		amended by 48 FR 31403	07-08-83
		corrected by 48 FR 32346	07-15-83
		corrected by 48 FR 35649	08-05-83
		amended by 48 FR 41409	09-15-83
Metal Finishing	433		
	413	48 FR 32462	07-15-83
		amended by 48 FR 41409	09-15-83
		corrected by 48 FR 43680	09-26-83
Metal Molding and Casting	464	50 FR 45212	10-30-85
Nonferrous Metals (Phase I)	421	49 FR 8742	03-08-84
		corrected by 49 FR 26738	06-29-84
		corrected by 49 FR 29792	07-24-84
		corrected by 50 FR 12252	03-28-85
		amended by 50 FR 38276	09-02-85
		corrected by 50 FR 41144	10-09-85
		corrected by 50 FR 52775	12-26-85
(Phase III)	471	50 FR 34242	08-23-85
		corrected by 51 FR 2884	01-22-86

Oil and Gas Extraction	435	41 FR 44942	10-13-76
		amended by	
		44 FR 22069	04-13-79
		amended by	
		47 FR 31554	07-21-82
Ore mining	440	47 FR 54598	12/03/82
Pesticides	455	50 FR 40672	10-04-85
Petroleum refining	419	47 FR 46434	10-18-82
		amended by	
		50 FR 28516	07-12-85
		corrected by	
		50 FR 32414	08-12-85
Pharmaceuticals	439	48 FR 49808	10-27-83
		corrected by	
		48 FR 50322	11-01-83
		amended by	
		50 FR 18486	05-01-85
Plastics	463	49 FR 49026	12-17-84
		corrected by	
		50 FR 18248	04-30-85
Porcelain enameling	466	47 FR 53172	11-24-82
		amended by	
		48 FR 31403	07-08-83
		amended by	
		48 FR 41409	09-15-83
Pulp and paper	430		
	431	47 FR 52006	11-18-82
		corrected by	
		48 FR 13176	03-30-83
		amended by	
		48 FR 31403	07-08-83
Steam-electric	423	47 FR 52290	11-19-82
		amended by	
		48 FR 31403	07-08-83
Textile mills	410	47 FR 33810	09-02-82
		corrected by	
		48 FR 39624	09-01-83
Timber	429	46 FR 8260	01-26-81
		amended by	
		46 FR 57287	11-23-81

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 11, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this proposed regulation will be held on August 21, 1986 at 10 a.m. in the Capital Plaza Tower. A person interested in attending this hearing or in submitting written comments shall submit by August 16, 1986, a written request or the written comments to Clyde P. Baldwin, P.E., Environmental Engineer Branch Manager, Division of Water - Permit Review Branch, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde P. Baldwin
(1) Type and number of entities affected: The proposed amendment updates the list in Section 4 of the effluent standards and limitations of 40 CFR Part 401 et seq. The proposed amendment makes technical corrections to Sections 1 and 4. Entities affected are those subject to 401 KAR 5:050 to 5:085 (KPDES). The incorporated technical corrections update citations to 40 CFR Parts 129 and 401 et seq. The Section 4 changes affect those entities engaged in the listed activities.
(a) Direct and indirect costs or savings to those affected:
1. First year: For the incorporated changes, the affected entities must meet under NPDES the stated requirements. The proposed amendment simply incorporates in KPDES those changes. The requirements may or may not result in costs or savings. For the technical corrections, there are no new costs or savings for the affected entities.
2. Continuing costs or savings: Same as (1)(a)1.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)1. No effect on competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of primacy, KPDES regulations must conform to NPDES regulations. The proposed technical corrections can only be implemented through amending the existing administrative regulation. No other alternative is feasible.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. The proposed amendment's incorporated changes modify KPDES permit conditions. These provisions apply to all KPDES permit holders. The proposed amendment also makes technical corrections. Thus, tiering is inappropriate for these corrections.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: KPDES permit conditions. Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
SPONSOR:
NOTE SUMMARY
LOCAL GOVERNMENT MANDATE: Yes.
TYPE OF MANDATE: Requirement to meet applicable performance standards of the KPDES.
LEVEL(S) OF IMPACT: City, County, Urban County Government.
BUDGET UNIT(S) IMPACT: Publically owned wastewater treatment plant.
FISCAL SUMMARY: Not applicable.
MEASURE'S PURPOSE: Section 4 changes update effluent standards. Technical corrections are made to Sections 1 and 4.
PROVISION/MECHANICS: The changes amplify existing obligations. This is not applicable to the technical corrections.
FISCAL EXPLANATION: There is no fiscal impact on local governments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:015. Documents incorporated by reference.

RELATES TO: KRS 224.320, 223.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of documents referred to within these regulations.

Section 1. Code of Federal Regulations. (1) The following documents from the "Code of Federal Regulations" which are in effect as of July 1, 1986 [March 1, 1985], are incorporated herein by reference:

(a) 40 CFR 50:

1. Appendix A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).
2. Appendix B: Reference Method for the Determination of Suspended Particulates in the Atmosphere (High Volume Method).
3. Appendix C: Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Spectrometry).
4. Appendix D: Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.
5. Appendix E: Reference Method for the Determination of Hydrocarbons Corrected for Methane.
6. Appendix F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).
7. Appendix G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.
8. Appendix H: Interpretation of the National Ambient Air Quality Standards for Ozone.

(b) 40 CFR 58: Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(c) 40 CFR 60:

1. Appendix A: Reference Methods:

a. Method 1 - Sample and Velocity Traverses for Stationary Sources.
b. Method 2 - Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).
c. Method 2A - Direct Measurement of Gas Volume through Pipes and Small Ducts.
d. Method 2B - Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators.
e. Method 3 - Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and Dry Molecular Weight.
f. Method 4 - Determination of Moisture Content in Stack Gases.
g. Method 5 - Determination of Particulate Emissions from Stationary Sources.
h. Method 5A - Determination of Particulate Emissions from the Asphalt Processing and Asphalt Roofing Industry.
i. Method 5D - Determination of Particulate Matter Emissions from Positive Pressure Fabric Filters.
j. Method 5E - Determination of Particulate Emissions from the Wool Fiberglass Insulation Manufacturing Industry.
(k) [j.] Method 6 - Determination of Sulfur Dioxide Emissions from Stationary Sources.
l. [k.] Method 6A - Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions from Fossil Fuel Combustion Sources,
m. [l.] Method 6B - Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions from Fossil Fuel Combustion Sources.
n. [m.] Method 7 - Determination of Nitrogen Oxide Emissions from Stationary Sources.
o. [n.] Method 7A - Determination of Nitrogen Oxide Emissions from Stationary Sources -- Ion Chromatographic Method.
p. Method 7B - Determination of Nitrogen Oxide Emissions from Stationary Sources (Ultraviolet Spectrophotometry).
q. [o.] Method 7C - Determination of Nitrogen Oxide Emissions from Stationary Sources -- Alkaline - Permanganate/Colorimetric Method.
r. [p.] Method 7D - Determination of Nitrogen Oxide Emissions from Stationary Sources -- Alkaline - Permanganate/Ion Chromatographic Method.
s. [q.] Method 8 - Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.
t. [r.] Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources.
u. [s.] Method 10 - Determination of Carbon Monoxide Emissions from Stationary Sources.
v. [t.] Method 11 - Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.
w. [u.] Method 12 - Determination of Inorganic Lead Emissions from Stationary Sources.
x. [v.] Method 13A - Determination of Total Fluoride Emissions from Stationary Sources - SPADNS Zirconium Lake Method.
y. [w.] Method 13B - Determination of Total Fluoride Emissions from Stationary Sources - Specific Ion Electrode Method.
z. [x.] Method 14 - Determination of Fluoride Emissions from Potroom Roof Monitors of Primary Aluminum Plants.
aa. [y.] Method 15 - Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.
bb. [z.] Method 16 - Semicontinuous Determination of Sulfur Emissions from Stationary Sources.
cc. Method 16A - Determination of Total Reduced Sulfur Emissions from Stationary Sources (Impinger Technique).
dd. [aa.] Method 17 - Determination of Particulate Emissions from Stationary Sources (Instack Filtration Method).
ee. [bb.] Method 18 - Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.
ff. [cc.] Method 19 - Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.
gg. [dd.] Method 20 - Determination of Nitrogen Oxides, Sulfur Dioxide, and Oxygen Emissions from Stationary Gas Turbines.
hh. [ee.] Method 21 - Determination of Volatile Organic Compounds Leaks.
ii. [ff.] Method 22 - Visual Determination of Fugitive Emissions from Material Processing Sources.

jj. [gg.] Method 24 - Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

kk. [hh.] Method 24A - Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings.

ll. [ii.] Method 25 - Determination of Total Gaseous Nonmethane Organic Emissions as Carbon.

mm. [jj.] Method 25A - Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

nn. [kk.] Method 25B - Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer.

oo. [ll.] Method 27 - Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test.

2. Appendix B: Performance Specifications:

a. Performance Specification 1 - Specifications and test procedures for opacity continuous emission monitoring systems in stationary sources.

b. Performance Specification 2 - Specifications and test procedures for sulfur dioxide and nitric oxides continuous emission monitoring systems in stationary sources.

c. Performance Specification 3 - Specifications and test procedures for oxygen and carbon dioxide continuous emission monitoring systems in stationary sources.

d. Performance Specification 4 - Specifications and test procedures for carbon monoxide continuous emission monitoring systems in stationary sources.

e. [d.] Performance Specification 5 - Specifications and test procedures for TRS continuous emission monitoring systems in stationary sources.

3. Appendix C: Determination of Emission Rate Change.

(d) 40 CFR 61.

1. Appendix B: Test Methods:

a. Method 101 - Determination of particulate and gaseous mercury emissions from chlor-alkali plants (air streams).

b. Method 101A - Determination of particulate and gaseous mercury emissions from sewage sludge incinerators.

c. Method 102 - Determination of particulate and gaseous mercury emissions from chlor-alkali plants (hydrogen streams).

d. Method 103 - Beryllium screening method.

e. Method 104 - Reference method for determination of beryllium emissions from stationary sources.

f. Method 105 - Method for determination of mercury in wastewater treatment plant sewage sludges.

g. Method 106 - Determination of vinyl chloride from stationary sources.

h. Method 107 - Determination of vinyl chloride content of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.

i. Method 107A - Determination of vinyl chloride content of solvents, resin-solvent solution, polyvinyl chloride resin, resin slurry, wet resin, and latex samples.

2. Appendix C: Quality Assurance Procedures:

a. Procedure 1 - Determination of adequate chromatographic peak resolution.

b. Procedure 2 - Procedures for field auditing GC analysis.

(2) Copies may be obtained from: Office of the Federal Register, National Archives and Records Service, 8th and Pennsylvania Avenue, NW, Washington, D.C. 20408; Phone (202) 523-5215.

Section 2. Association of Official Analytical Chemists. The following document from the Association of Official Analytical Chemists is incorporated herein by reference:

(1) Method 9 - Spectrophotometric Molybdovanadophosphate from "Official Method of Analysis" of the Association of Official Analytical Chemists, 11th Edition.

(2) Copies may be obtained from: Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20044; Phone (202) 245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate "Book of ASTM Standards" in which the standard appears from the American Society for Testing and Materials are incorporated herein by reference:

(1) ASTM Standards:

(a) A 99-66(71) Standard Specification for Ferromanganese.

(b) A 100-69(74) Standard Specification for Ferrosilicon.

(c) A 101-73 Standard Specification for Ferrochromium.

(d) A 482-66(71) Standard Specification for Ferrochrome-Silicon.

(e) A 483-64(74) Standard Specification for Silicomanganese.

(f) A 495-64(70) Standard Specification for Calcium-Silicon and Calcium-Manganese-Silicon.

(g) D 86-82 Standard Method for distillation of Petroleum Products.

(h) D 240-76 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.

(i) D 322-67(77) Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation.

(j) D 388-66(72) Standard Specification for Classification of Coals by Rank.

(k) D 737-75 Standard Test Method for Air Permeability of Textile Fabrics.

(l) D 1072-80 Standard Method for Total Sulfur in Fuel Gases.

(m) D 1137-53(75) Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer.

(n) D 1475-60(80) Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.

(o) D 1644-75 Standard Test Methods for Nonvolatile Content of Varnishes.

(p) D 1826-64(75) Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

(q) D 1945-64(73) Standard Method for Analysis of Natural Gas by Gas Chromatography.

(r) D 1946-67(72) Standard Method for Analysis of Reformed Gas by Gas Chromatography.

(s) D 2015-66(72) Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter.

(t) D 2267-83 Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography.

(u) D 2369-73 Standard Test Method for Volatile Content of Paints.

(v) D 2382-83 Standard Test Method for Heat of

Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method).

(w) D 2504-83 Standard Test Method for Noncondensable Gases in C_3 and Lighter Hydrocarbon Products by Gas Chromatography.

(x) D 2584-68(79) Standard Test Method for Ignition Loss of Cured Reinforced Resins.

(y) [(x)] D 2880-78 Standard Specification for Gas Turbine Fuel Oils.

(z) [(y)] D 2879-83 Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperatures of Liquids by Isoteniscope.

(aa) [(z)] D 3031-81 Standard Test Method for Total Sulfur in Natural Gas by Hydrogenation.

(bb) [(aa)] D 3176-74 Standard Method for Ultimate Analysis of Coal and Coke.

(cc) [(bb)] D 3178-73 Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke.

(dd) [(cc)] D 3246-81 Standard Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.

(ee) [(dd)] D 4084-82 Standard Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method).

(ff) [(ee)] E 123-78 Standard Specification for Apparatus for Determination of Water by Distillation.

(gg) [(ff)] E 168-67(77) Standard Recommended Practices for General Techniques of Infrared Quantitative Analysis.

(hh) [(gg)] E 169-63(81) Standard Recommended Practices for General Techniques of Ultraviolet Quantitative Analysis.

(ii) [(hh)] E 260-73 Standard Recommended Practice for General Gas Chromatography Procedures.

(2) Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; Phone (215) 299-5400.

Section 4. Technical Association of the Pulp and Paper Industry. The following document from the Technical Association of the Pulp and Paper Industry (TAPPI) is incorporated herein by reference:

(1) T624 os-68 - Analysis of Soda and Sulfate - White and Green Liquors. This reference is also numbered ANSI P3.6-1970 (American National Standards Institute).

(2) Copies may be obtained from: TAPPI, 1 Dunwood Park, Atlanta, Georgia 30341.

Section 5. EPA. The following documents from the U. S. EPA are incorporated herein by reference:

(1) (a) Guideline on Air Quality Models, EPA-450/2-78-027, OAQPS No. 1.2-080, April, 1978.

(b) Workbook for Comparison of Air Quality Models, EPA-450/2-78-028a, OAQPS No. 1.2-097, May, 1978.

(c) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, Appendix B, EPA-450/2-78-036, OAQPS No. 1.2-111, June, 1978.

(d) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA-450/2-78-051, OAQPS No. 1.2-119, December, 1978.

(e) Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA-450/2-77-026, OAQPS No. 1.2-082, October, 1977.

(f) Guidelines for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height, EPA 450/4-81-003, PB 82-145327, July, 1981.

(g) Guidelines for Fluid Modeling of Atmospheric Diffusion, EPA-600/8-81-009, PB 81-201410, April, 1981.

(2) Copies may be obtained from: U. S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 and the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia 22161.

Section 6. American Association of State Highway and Transportation Officials. The following document from the American Association of State Highway and Transportation Officials (AASHTO) is incorporated herein by reference:

(1) AASHTO T 59-78 Standard Method of Test for Testing Emulsified Asphalt.

(2) Copies may be obtained from: American Association of State Highway and Transportation Officials, 444 N. Capitol Avenue, Washington, D.C. 20001.

Section 7. Federal Test Method Standard. The following document from the Federal Test Standard is incorporated herein by reference:

(1) Federal Test Method Standard No. 141a, Method 4082.1, "Water in Paints and Varnishes (Karl Fischer Titration Method)."

(2) Single copies may be obtained from:

(a) General Services Administration Regional Offices; or

(b) Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

Section 8. Kentucky Division of Air Pollution. The following documents from the Kentucky Division of Air Pollution are incorporated herein by reference:

(1)(a) Kentucky Method 50: Kentucky Division of Air Pollution Control Reference Method 50, "Determination of Total Particulate Emissions from Stationary Sources."

(b) Kentucky Method 90: Kentucky Division of Air Pollution Control Reference Method 90, "Determination of Total Gaseous Organic Emissions from Stationary Sources."

(c) Kentucky Method 91: Kentucky Division of Air Pollution Control Reference Method 91, "Alternate Test Method for the Determination of Total Gaseous Organic Emissions from Stationary Sources."

(d) Kentucky Method 95: Kentucky Division of Air Pollution Control Reference Method 95, "Determination of Gasoline Vapor Emissions from Bulk Terminals."

(e) Kentucky Method 130: Kentucky Division of Air Pollution Control Reference Method 130, "Determination of Gaseous Fluoride Emissions from Stationary Sources."

(f) Kentucky Method 150(F-1): Kentucky Division of Air Pollution Control Reference Method 150(F-1), "Visual Determination of Intermittent Opacity Emissions from Stationary Sources."

(2) Copies may be obtained from: Division of Air Pollution, Technical Services, Department for Environmental Protection, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

Section 9. American National Standards Institute. The following document from the American National Standards Institute is

incorporated herein by reference:

(1) Voluntary Product Standard PS 59-73 - Prefinished Hardboard Paneling. This reference is also numbered ANSI A135.5-1973 (American National Standards Institute).

(2) Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 10. American Public Health Association. The following document from the American Public Health Association, American Water Works Association and Water Pollution Control Federation is incorporated herein by reference:

(1) [Method 209B from] Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980: [.]

(a) Method 209A. Total Residue Dried at 103-105C.

(b) Method 209C. Total Filtrable Residue Dried at 103-105C.

(2) Copies may be obtained from: American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

Section 11. Availability. Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(1) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(2) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(3) Bowling Green Regional Office, 1508 Westen Avenue [210 East Tenth Street], Bowling Green, Kentucky 42101, (502) 842-8131;

(4) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(5) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(6) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(7) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary

APPROVED BY AGENCY: July 11, 1986

FILED WITH LRC: July 14, 1986 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation incorporates by reference the methods required for demonstrating compliance in the regulations for the Division of Air Pollution Control. This regulation is being amended to add methods as required in the regulations which are being proposed by the Division. Simply incorporating these methods does not of itself affect any sources or other entities. Any impact on a source would occur only through the individual regulation where the methods are required.

(a) Direct and indirect costs or savings to those affected: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None. Any requirements appear in the individual regulations.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since this regulation is merely incorporating the methods required in other regulations.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: This regulation is being amended to add the test methods that are used to demonstrate compliance with regulations that the Division is currently amending or proposing. Some of these methods are reference methods, performance specifications, and ASTM methods that are required in regulations on New Source Performance Standards (NSPS) which the Division is adopting by reference. Other methods which the Division is adopting are Methods 209A and 209C from the Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980 and the Division is deleting Method 209B. Method 209A will be used to determine compliance with the federal NSPS regulation for new wool fiberglass insulation manufacturing plants and Method 209C will replace the existing Method 209B, since this change is required by the U.S. EPA to approve the state's regulation for existing by-product coke manufacturing plants, 401 KAR 61:140. Method 209C will be used to measure total dissolved solids (TDS) in the make-up water in by-product coke manufacturing plants, and it differs from Method 209B in that the temperature of the drying oven is maintained at 103°C-105°C, instead of 180°C.

Finally, another method is being added to be used in demonstrating compliance with the regulations for new and existing process operations, 401 KAR 59:010 and 401 KAR 61:020. Kentucky's State Implementation Plan (SIP) for Particulate Matter has not been fully approved by the U.S. Environmental Protection Agency (EPA). The U.S. EPA determined that Reasonably Available Control Technology (RACT) is not being used for sources of intermittent fugitive particulate emissions, and suggested that

Kentucky adopt a measurement method which is similar to the U.S. EPA's Method 9 for reading opacity, but which uses shorter averaging times. Kentucky is therefore incorporating by reference Kentucky Method 150(F-1). This method is similar to the U.S. EPA's Method 9, except that an averaging time of three minutes is used, rather than six minutes. Further discussion of Kentucky Method 150(F-1) appears in the regulatory impact analyses for 401 KAR 59:010 and 401 KAR 61:020.

Tiering:
Was tiering applied? No. Tiering was not applied because this regulation adopts by reference those methods for determining compliance which are required by other regulations. Tiering is not applicable in this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:010. New process operations.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new process operations which are not subject to another particulate standard within this chapter.

Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility or source, associated with a process operation, which is not subject to another emission standard with respect to particulates in this chapter, commenced on or after the classification date defined below.

(2) The provisions of this regulation which apply to affected facilities or sources located in non-attainment areas shall continue to apply to those affected facilities or sources if the area is redesignated to attainment or unclassified status in 401 KAR 51:010 or 40 CFR 81.318, unless a state implementation plan which provides for other controls is approved by the U.S. EPA.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, and shall include any storage or handling of materials or products, before, during, or after manufacturing or processing.

(2) "Process weight" means the total weight of all materials introduced into any affected facility which may cause any emission of particulate matter, but does not include liquid and gaseous fuels charged, combustion air, or uncombined water.

(3) "Process weight rate" means a rate established as follows:

(a) For continuous or long-run steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(b) For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

(c) Where the nature of any process operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation which results in the minimum value for allowable emission shall apply.

(4) "Affected facility" as related to process operations means the last operation preceding the emission of air contaminants which results:

(a) In the separation of the air contaminant from the process materials; or

(b) In the conversion of the process materials into air contaminants, but does not include an air pollution abatement operation.

(5) "Classification date" means July 2, 1975.

(6) "Continuous emission" means a visible emission of particulate matter which persists for more than three (3) minutes, the opacity of which is measured in accordance with Reference Method 9, filed by reference in 401 KAR 50:015. ["Reasonably available control technology (RACT)" means, as approved by the cabinet on a case-by-case basis, the lowest emission limit that a source is capable of meeting using control equipment or operational practices that are available to the source, taking into consideration technological and economic feasibility.]

(7) "Intermittent emission" means a visible emission of particulate matter which persists for three (3) minutes or less, the opacity of which is measured in accordance with Kentucky Method 150(F-1), filed by reference in 401 KAR 50:015.

Section 3. Standard for Particulate Matter. (1) Opacity standard.

(a) No person shall cause, suffer, allow, or permit any continuous emission into the open air from a control device or stack associated with any affected facility which is equal to or greater than twenty (20) percent opacity.

(b) No person shall cause, suffer, allow or permit any continuous or intermittent fugitive emission into the open air from [a control device or stack associated with] any affected facility or source located in any area designated non-attainment for particulate matter under 401 KAR 51:010 which is equal to or greater than twenty (20) percent opacity, or which remains visible beyond the lot line of the property on which the emission originates.

(c) For sources commenced on or after the classification date of this regulation, but before the effective date of this regulation, variation with the standards specified in paragraph (b) of this subsection, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source, provided that such a variance has been approved by the U.S. EPA.

(2) Mass emission standard.

[(a)] For emissions from a control device or stack no person shall cause, suffer, allow or permit the emission into the open air of

particulate matter from any affected facility which is in excess of the quantity specified in Appendix A to this regulation.

[(b) Fugitive emissions of particulate matter from any affected facility located in any area designated non-attainment for particulate matter under 401 KAR 51:010 shall be subject to reasonably available control technology requirements as set forth in conditions appearing on the operating permit.]

Section 4. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Section 3 of this regulation shall be conducted according to the following methods. Kentucky Methods 50 and 150(F-1) and other [reference] methods are filed by reference in 401 KAR 50:015.

(1) For sources located in or having significant impact upon areas designated non-attainment for total suspended particulates under 401 KAR 51:010, Kentucky Method 50 for the emission rates of particulate matter and the associated moisture content. In all other areas Reference Method 5 shall be used.

(2) Reference Method 1 for sample and velocity traverses.

(3) Reference Method 2 for velocity and volumetric flow rate.

(4) Reference Method 3 for gas analysis.

(5) Reference Method 9 for opacity of continuous emissions.

(6) Kentucky Method 150(F-1) for opacity of intermittent emissions. [For intermittent emissions, the method to determine opacity shall be a method promulgated by U.S. EPA and subsequently adopted by the cabinet pursuant to the requirements of KRS Chapter 13.]

(7) For Kentucky Method 50 or Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sample volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling time or volumes, when necessitated by process variables or other factors, may be approved by the cabinet.

APPENDIX A TO 401 KAR 59:010
ALLOWABLE RATE OF PARTICULATE EMISSION
BASED ON PROCESS WEIGHT RATE

Process Weight Rate		Maximum Allowable Emission Rate
Lb/Hr.	Ton/Hr.	Lb/Hr.
1,000 or less	0.50 or less	2.34
1,500	0.75	3.00
2,000	1.00	3.59
2,500	1.25	4.12
3,000	1.50	4.62
3,500	1.75	5.08
4,000	2.00	5.52
5,000	2.50	6.34
6,000	3.00	7.09
7,000	3.50	7.81
8,000	4.00	8.48
9,000	4.50	9.12
10,000	5.00	9.74
12,000	6.00	10.90
16,000	8.00	13.03
18,000	9.00	14.02
20,000	10.00	14.97
30,000	15.00	19.24
40,000	20.00	23.00
50,000	25.00	26.41
60,000	30.00	29.57
70,000	35.00	30.57
80,000	40.00	31.23
90,000	45.00	31.83
100,000	50.00	32.37
120,000	60.00	33.33
140,000	70.00	34.16
160,000	80.00	34.90
200,000	100.00	36.17
1,000,000	500.00	46.79
2,000,000	1,000.00	52.28
6,000,000	3,000.00	62.32

Interpolation of the data for process weight rates up to 60,000 lb/hr. shall be accomplished by use of the equation

$$E = 3.59P^{0.62}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr. shall be accomplished by the use of the equation

$$E = 17.31P^{0.16}$$

where E = rate of emission in lb/hr and P = process weight rate in tons/hr.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: All stationary sources in Kentucky emitting fugitive particulate matter commenced on or after July 2, 1975, and located in areas which are designated non-attainment for particulate matter under 401 KAR 51:010 are potentially affected by this regulatory change.

The intent of this amendment is to ensure that Reasonably Available Control Technology (RACT) is installed and consistently maintained in all non-attainment areas for particulates. The use of RACT in non-attainment areas is required by federal law. Examples of control techniques that are considered to be RACT include: (1) Wet suppression and fogging sprays; (2) Enclosures and coverings; (3) Water trucks; (4) Adjustable chutes; etc.

The proposed amendment will ensure the regulatory control of fugitive dust sources in particulate non-attainment areas by requiring compliance with an opacity standard. Specifically, the proposal would limit fugitive particulate emissions for sources in particualte non-attainment areas to no more than 20% opacity. RACT, then, would be defined as those control techniques and equipment necessary to meet that standard. To ensure the necessary control of fugitive emissions in non-attainment areas for particulates, EPA requires that both continuous and intermittent emissions be

controlled. The existing method for determining compliance with opacity regulations is Method 9, which requires the use of the average of opacity readings taken every 15 seconds for a six-minute period. While this regulation, if applied to fugitive emissions, is sufficient to ensure the use of RACT in most instances, it would allow sources to emit very dense emissions for short durations.

The proposed amendment includes a procedure which will achieve the purpose required by EPA by providing for shorter averaging times for short-term emissions. Specifically, it will require that opacity readings taken every fifteen seconds for three minutes, rather than six minutes, be averaged if the emission being observed persists for less than or equal to twelve consecutive observations in accordance with Kentucky Method 150(F-1). Regulations controlling short-term emissions already have been adopted in Kentucky for specific types of sources having particulate emissions (e.g., steel and coke plants). It is not the intention of this proposed amendment to change the level of control that a source must achieve in order to be in compliance with the regulations. In fact, it is the assessment of the Division that it will be neither more difficult nor less difficult for Kentucky sources to achieve compliance under the proposed amendment than under the existing regulation. (The existing regulation also requires RACT for non-attainment areas for particulates.)

Finally, it must be noted that these amendments are being proposed in response to guidance from the U.S. EPA that Kentucky's Part D State Implementation Plan, which presently is only conditionally approved, can be fully approved if these amendments are made. Only then can non-attainment areas which have adequate air quality data be redesignated to attainment, thereby facilitating any expansion of existing sources and the construction or modification of new sources in these areas.

(a) Direct and indirect costs or savings to those affected: It is not anticipated that there will be any additional costs or savings to sources of fugitive dust that will accrue from the promulgation of this amendment.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: It is not anticipated that there will be any significant change in reporting or paperwork requirements in the regulated community as a result of these proposals.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Although these amendments might fractionally increase the total amount of inspection time that must be spent by the Division, it is not anticipated to have a noticeable effect upon Division expenditures.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: The redesignation of a number of the particulate non-attainment areas to attaimnet that is expected to result from the adoption of these amendments will slightly reduce the routine reporting of compliance status for sources in those areas to the U.S. EPA and reduce the volume of reports that must be submitted to the U.S. EPA identifying the progress made toward improving air quality in non-attainment areas (the annual Reasonable Further Progress (RFP) report).

(3) Assessment of anticipated effect on state and local revenues: It is anticipated that there will be a slight increase in permit fee revenue as new sources commence or modify their operations after the areas are redesignated to attainment. Some state and local revenue benefits are also expected as new sources are allowed to commence or modify their operation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Division considered, and rejected, alternatives to this action for the following reasons:

(a) Take no action. The Division could have elected take no action to change its existing regulations in the particulate non-attainment areas. As a consequence, the U.S. EPA would have continued to consider Kentucky's Part D State Implementation Plan as inadequate to achieve and maintain the National Ambient Air Quality Standards for particulate matter. As a further consequence, the redesignation of areas from non-attainment to attainment could not be accomplished, thereby continuing the present restrictions upon the construction or modification of new sources.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes. Tiering is applied for the proposed amendments to the extent that the nature of the emissions and the size of the source determines what controls, if any, a source in a non-attainment area will have to install in order to meet the requirements of the proposed amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:196. New metal furniture coating operations.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new metal furniture coating operations.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "Regional Administrator" shall be

read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new metal furniture surface coating operations contained in 40 CFR 60, Subpart EE, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1985 [1983], is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart EE are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart EE, limits emissions of volatile organic compounds from [all] new metal furniture surface coating operations that commenced construction, modification or reconstruction after November 28, 1980. A metal furniture surface coating operation is defined to be the system used to apply and dry or cure an organic coating on the surface of the metal furniture part or product. The surface coating operation may be a prime coat or a top coat operation and includes the coating application station, flash-off area, and curing oven. The standards in the federal regulation represent the best demonstrated technology for the industry. Small metal furniture surface coating operations which use less than 3,842 liters (1,000 gallons) of coating per year, as applied, are exempt from the standards contained in 40 CFR 60, Subpart EE, however, such small operations shall be required to maintain purchase or inventory records or other data necessary to substantiate annual usage for a period of at least two (2) years.

Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (501) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Peformance Standards (NSPS) for metal furniture surface coating operations, 40 CFR 60, Subpart EE. The U.S. EPA granted Kentucky the delegation of authority to implement the provisions of the federal regulation based on the state's regulation 401 KAR 59:196, which was promulgated on January 7, 1985. The U.S. EPA subsequently amended the federal regulation on April 30, 1985 (50 FR 18249), to exempt small metal furniture surface coating facilities which use less than 3,842 liters (1,000 gallons) of coating (as applied) per year, from the standards in 40 CFR 60, Subpart EE. Available information indicates that there are no existing sources in the state which would qualify for this exemption in 40 CFR 60, Subpart EE. Therefore, there will be no adverse impacts on the quality of air due to this exemption. The state's regulation is being amended to allow this exemption to small sources should any be constructed in the future. Any exempted sources will still be required to maintain purchase or inventory records or other data necessary to substantiate the annual usage. Since the proposd amendment represents a relaxation for small sources there are no economic disadvantages to Kentucky caused by promulgating this regulation.

(a) Direct and indirect costs or savings to those affected: There are no additional costs due to the proposed amendment. Sources which use less than 1,000 gallons of coating per year, as applied, will realize some savings from being exempt from th emission standard in 40 CFR 60.312, monitoring requirements in 40 CFR 60.313, and the specific recordkeeping requirements in 40 CFR 60.314.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: If a source wishes to be exempt as allowed in the proposed amendment, an owner or operator of any small metal furniture surface coating operation that uses less the 3,842 liters of coating per year, as applied, is required to keep purchase or inventory records or other data to substantiate the annual coating usage.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None due to the proposed amendment.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None due to the proposed amendment.

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

(4) Assessment of alternative methods; reasons

why alternatives were rejected: No alternative methods were considered since this regulation contains the same provisions as the federal regulation. Kentucky is amending this regulation so that the state's regulation will be identical to the federal regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None due to the proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes. This regulation is being amended to exempt small metal furniture coating operations which use less than 1,000 gallons of coating per year, as applied, from the standards of the federal regulation, provided that such sources maintain purchase or inventory records.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:020. Existing process operations.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340

PURSUANT TO: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing process operations which are not subject to another particulate emission standard within this chapter.

Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility or source, associated with a process operation, which is not subject to another emission standard with respect to particulates in this chapter, commenced before the classification date defined below.

(2) The provisions of this regulation which apply to affected facilities or sources located in non-attainment areas shall continue to apply to those affected facilities or sources if the area is redesignated to attainment or unclassified status in 401 KAR 51:010 or 40 CFR 81.318, unless a state implementation plan which provides for other controls is approved by the U.S. EPA.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Process operation" means any method, form, action, operation or treatment of manufacturing or processing, and shall include any storage or handling of materials or products, before, during, or after manufacturing or processing.

(2) "Process weight" means the total weight of all materials introduced into any affected facility which may cause any emission of particulate matter, but does not include liquid and gaseous fuels charged, combustion air, or uncombined water.

(3) "Classification date" means July 2, 1975.

(4) "Process weight rate" means a rate established as follows:

(a) For continuous or long-run steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof;

(b) For cyclical or batch unit operations, or unit processes, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period; and

(c) Where the nature of any process operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation which results in the minimum value for allowable emission shall apply.

(5) "Affected facility" as related to process operations means the last operation preceding the emission of air contaminants which results:

(a) In the separation of the air contaminant from the process materials; or

(b) In the conversion of the process materials into air contaminants, but does not include an air pollution abatement operation.

(6) "Continuous emission" means a visible emission of particulate matter which persists for more than three (3) minutes, the opacity of which is measured in accordance with Reference Method 9, filed by reference in 401 KAR 50:015. ["Reasonably available control technology (RACT)" means, as approved by the cabinet on a case-by-case basis, the lowest emission limit that a source is capable of meeting using control equipment or operational practices that are available to the source, taking into consideration technological and economic feasibility.]

(7) "Intermittent emission" means a visible emission of particulate matter which persists for three (3) minutes or less, the opacity of which is measured in accordance with Kentucky Method 150(F-1), filed by reference in 401 KAR 50:015.

Section 3. Standard for Particulate Matter. (1) Opacity standard.

(a) No person shall cause, suffer, allow or permit any continuous emission into the open air from a control device or stack associated with any affected facility which is equal to or greater than forty (40) percent opacity.

(b) No person shall cause, suffer, allow or permit any continuous or intermittent fugitive emission into the open air from [a control device or stack associated with] any affected facility or source located in any area designated non-attainment for particulate matter under 401 KAR 51:010 which is equal to or greater than twenty (20) [forty (40)] percent opacity, or which remains visible beyond the lot line of the property on which the emission originates.

(c) Variation with the standards specified in paragraph (b) of this subsection, when supported by adequate technical information, will be

considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source, provided that such a variance has been approved by the U.S. EPA.

(2) Mass emission standard.

(a) For emissions from a control device or stack, no person shall cause, suffer, allow or permit the emission into the open air of particulate matter from any affected facility which is in excess of the quantity specified in Appendix A of this regulation.

(b) An affected facility may elect to substitute the following standards in lieu of the value given in Appendix A:

1. A maximum exit particulate emission concentration of 0.02 grains per standard cubic foot;

2. Air pollution control equipment of at least ninety-seven (97) percent actual efficiency; and

3. Addition of dilution air shall not constitute compliance.

[(c) Fugitive emissions of particulate matter from any affected facility located in any area designated non-attainment for particulate matter under 401 KAR 51:010 shall be subject to reasonably available control technology requirements as set forth in conditions appearing on the operating permit.]

Section 4. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Section 3 of this regulation shall be conducted according to the following methods (Kentucky Methods 50 and 150(F-1) and other [reference] methods are filed by reference in 401 KAR 50:015):

(1) Kentucky Method 50 for sources located in or having a significant impact upon non-attainment areas for total suspended particulates as designated in 401 KAR 51:010, and Reference Method 5 for sources located in all other areas, for the emission rates of particulate matter and the associated moisture content.

(2) Reference Method 1 for sample and velocity traverses.

(3) Reference Method 2 for velocity and volumetric flow rate.

(4) Reference Method 3 for gas analysis.

(5) Reference Method 9 for opacity of continuous emissions.

(6) Kentucky Method 150(F-1) for opacity of intermittent emissions. [For intermittent emissions, the method to determine opacity shall be a method promulgated by U.S. EPA and subsequently adopted by the cabinet pursuant to the requirements of KRS Chapter 13].

(7) For Kentucky Method 50 and Reference Method 5, Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least sixty (60) minutes and the minimum sample volume shall be 0.85 dscm (thirty (30) dscf) except that smaller sampling time or volumes, when necessitated by process variables or other factors, may be approved by the cabinet.

APPENDIX A TO 401 KAR 61:020
ALLOWABLE RATE OF PARTICULATE EMISSION
BASED ON PROCESS WEIGHT RATE

Process Weight Rate		Maximum Allowable Emission Rate
Lb/Hr.	Ton/Hr.	Lb/Hr.
1,000 or less	0.50 or less	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.0
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.1
200,000	100.00	51.3
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

Interpolation of the data for process weight rates up to 60,000 lb/hr. shall be accomplished by use of the equation

$$E = 4.10P^{0.67}$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr. shall be accomplished by the use of the equation

$$E = 55.0P^{0.11}-40$$

where E = rate of emission in lb/hr and P = process weight rate in tons/hr.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: All

stationary sources in Kentucky emitting fugitive particulate matter commenced before July 2, 1975, and located in areas which are designated non-attainment for particulate matter under 401 KAR 51:010 are potentially affected by this regulatory change. The intent of this amendment is to ensure that Reasonably Available Control Technology (RACT) is installed and consistently maintained in all non-attainment areas for particulates. The use of RACT in non-attainment areas is required by federal law. Examples of control techniques that are considered to be RACT include: (1) Wet suppression and fogging sprays; (2) Enclosures and coverings; (3) Water trucks; (4) Adjustable chutes; etc. The proposed amendment will ensure the regulatory control of fugitive dust sources in particulate non-attainment areas by requiring compliance with an opacity standard. Specifically, the proposal would limit fugitive particulate emissions for sources in particulate non-attainment areas to no more than 20 percent opacity. RACT, then, would be defined as those control techniques and equipment necessary to meet that standard. To ensure the necessary control of fugitive emissions in non-attainment areas for particulates, EPA requires that both continuous and intermittent emissions be controlled. The existing method for determining compliance with opacity regulations is Method 9, which requires the use of the average of opacity readings taken every 15 seconds for a six-minute period. While this regulation, if applied to fugitive emissions, is sufficient to ensure the use of RACT in most instances, it would allow sources to emit very dense emissions for short durations. The proposed amendment includes a procedure which will achieve the purpose required by EPA by providing for shorter averaging times for short-term emissions. Specifically, it will require that opacity readings taken every 15 seconds for 3 minutes, rather than 6 mintues, be averaged if the emission being observed persists for less than or equal to 12 consecutive observations in accordance with Kentucky Method 150(F-1). Regulations controlling short-term emissions already have been adopted in Kentucky for specific types of sources having particulate emissions (e.g., steel and coke plants). It is not the intention of this proposed amendment to change the level of control that a source must achieve in order to be in compliance with the regulations. In fact, it is the assessment of the division that it will be neither more difficult nor less difficult for Kentucky sources to achieve compliance under the proposed amendment than under the existing regulation. (The existing regulation also requires RACT for non-attainment areas for particulates.) Finally, it must be noted that these amendments are being proposed in response to guidance from the U.S. EPA that Kentucky's Part D State Implementation Plan, which presently is only conditionally approved, can be fully approved if these amendments are made. Only then can non-attainment areas which have adequate air quality data be redesignated to attainment, thereby facilitating any expansion of existing sources and the construction or modification of new sources in these areas.

(a) Direct and indirect costs or savings to those affected: It is not anticipated that there will be any additional costs or savings to sources of fugitive dust that will accrue from the promulgation of this amendment.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: It is not anticipated that there will be any significant change in reporting or paperwork requirements in the regulated community as a result of these proposals.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Although these amendments might fractionally increase the total amount of inspection time that must be spent by the division, it is not anticipated to have a noticeable effect upon division expenditures.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: The redesignation of a number of the particulate non-attainment areas to attainment that is expected to result from the adoption of these amendments will slightly reduce the routine reporting of compliance status for sources in those areas to the U.S. EPA and reduce the volume of reports that must be submitted to the U.S. EPA identifying the progress made toward improving air quality in non-attainment areas (the annual Reasonable Further Progress (RFP) report).

(3) Assessment of anticipated effect on state and local revenues: It is anticipated that there will be a slight increase in permit fee revenues as existing sources expand their operations after the areas are redesignated to attainment. Some state and local revenue benefits are also expected as existing sources are allowed to expand their operation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The division considered, and rejected, alternatives to this action for the following reasons: Take no action. The division could have elected to take no action to change its existing regulations in the particulate non-attainment areas. As a consequence, the U.S. EPA would have continued to consider Kentucky's Part D State Implementation Plan as inadequate to achieve and maintain the National Ambient Air Quality Standards for particulate matter. As a further consequence, the redesignation of areas from non-attainment to attainment could not be accomplished, thereby continuing the present restrictions upon the expansion of existing sources.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes. Tiering is applied for the proposed amendments to the extent that the nature of the emissions and the size of the source determines what controls, if any, a

source in a non-attainment area will have to install in order to meet the requirements of the proposed amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:140. Existing by-product coke manufacturing plants.

RELATES TO: KRS [Chapter] 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of emissions from existing by-product coke manufacturing plants.

Section 1. Applicability. The provisions of this regulation are applicable to each affected facility commenced before the classification date defined below.

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010 and 401 KAR 61:005.
(1) "Affected facility" means a by-product coke oven battery.
(2) "Classification date" means April 9, 1972.
(3) "Coke oven battery" means a number of slot-type coking chambers arranged side by side.
(4) "Charging" means the process of conveying coal and dropping it into a coke oven through the charging holes or ports located on top of the oven.
(5) "Coking" means the destructive distillation of coal in the absence of oxygen.
(6) "Coke" means a solid form of carbon resulting from the destructive distillation of coal.
(7) "Coke oven" means a refractory lined, heated, slot-type chamber in which coke is produced.
(8) "Chuck door" means the port for the leveling bar.
(9) "Leveling bar" means a structured steel bar pushed back and forth horizontally through the chuck door and used to eliminate the peaks in the coal charged in the oven.
(10) "Collecting main" means the horizontal manifold connected to the standpipes used to conduct the volatile materials to the by-products plant.
(11) "Larry car" means the apparatus used to charge coal into an empty oven. It is also known as a charging car.
(12) "Pusher machine" means a large apparatus which travels on rails alongside the battery and used to remove doors and push coke from the ovens.
(13) "Gooseneck" means a short curved cast iron refractory lined pipe that conveys the volatiles from the standpipe to the collector main.
(14) "Standpipe" means a short vertical refractory lined pipe which conducts volatiles from an oven through the gooseneck to the collector main.
(15) "Quench" means the process whereby water is used to cool the hot coke.
(16) "Quenching car" means an apparatus used to convey hot coke to the quenching tower. It is also known as a wharf car.
(17) "Charging period" means for larry car charging systems, the period of time commencing when the first hopper gate is opened and ending when the last topside port lid is replaced. The charging period includes the period of time during which the port lid is reopened in order to sweep spilled coal into the oven.
(18) "Total coke oven doors" means push and coke side doors with the chuck doors considered to be part of the push side doors.

Section 3. Standards for Particulate Matter. No person subject to the provisions of this regulation shall cause, suffer or allow particulate matter to be discharged to the atmosphere from each affected facility or operation of a by-product coke oven battery except as follows:
(1) Coke oven charging: No visible emissions during the charging cycle from the control equipment, the charging ports, the larry cars or the open chuck door, except for an average of twenty-five (25) seconds of any visible emissions (excluding water vapor) per charge, averaged over five (5) consecutive charges.
(2) Battery topside leaks: No more than five (5) percent of the charging ports and ten (10) percent of the standpipes on operating ovens shall be leaking (exhibiting visible emissions except for steam or non-smoking flame) at any time.
(3) Doors: No visible emission, except non-smoking flame, from more than ten (10) percent of the total coke oven doors on a battery.
(4) Combustion stack: No visible emission (other than water mist or vapor) shall exceed twenty (20) percent opacity from any coke oven combustion stack.
(5) Pushing: Emissions shall be controlled such that:
(a) No visible emissions, as observed at fifteen (15) second intervals, shall exceed twenty (20) percent opacity from the time the oven door removal has been completed until the hot car is inside the quench tower except for ten (10) percent of the total number of observations recorded.
(b) The emission rate from the control device shall not exceed 0.030 pounds of filterable particulate per ton of coke pushed, averaged over a number of pushes.
(6) Quenching:
(a) No visible emissions, except water vapor or mist shall exceed an opacity of twenty (20) percent during the quenching operations.
(b) No process water shall be used for quenching and the make-up water shall not contain total dissolved solids concentration in excess of 750 mg/liter.
(c) The quench tower draft shall be adequate to ensure that all visible quenching gases exit through the quench tower baffles.

Section 4. Standard for Sulfur Dioxide. Coke oven gas shall not be burned or discharged unless it contains a concentration of sulfur compounds (expressed as sulfur dioxide) as determined by Appendix A of this regulation that

will result in emissions of no more than ninety-five (95) pounds of equivalent sulfur dioxide per million cubic feet of coke oven gas produced. Included in this are all sulfur compounds, expressed as sulfur dioxide, emitted from sulfur recovery equipment used to process the sulfur compounds removed from coke oven gas.

Section 5. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, and subsections (2) and (3) of this section, performance tests used to demonstrate compliance with Sections 3 and 4 of this regulation shall be conducted according to the following methods (filed by reference in 401 KAR 50:015):

(a) Reference Method 9 for combustion stack opacity and pushing operation, except for time averaging and number of observations.

(b) Method 209C [B] from the Standard Methods for the Evaluation of Water and Wastewater, Fifteenth Edition, 1980, for determining total dissolved solids in make-up water.

(2) Determination of sulfur in coke oven gas. Cleaned coke oven gas and any Claus plant tail gas shall be sampled for hydrogen sulfide, carbonylsulfide, and carbon disulfide by gas chromatograph separation and flame photometric or thermal conductivity detection. Alternate methods may be approved by the cabinet. Clean gas and tail gas flow shall be measured by in-line continuous orifice, venturi or elbow tap flow meters. Compliance testing shall consist of simultaneous measurement of sweet (clean) coke oven gas and sulfur recovery tail gas concentrations and flows. Four (4) samples per hour shall be acquired for concentration and flows during a four (4) hour test period. Compliance shall be determined from the arithmetic average of the sixteen (16) values calculated by using the formula in Appendix A of this regulation.

(3) Determination of visible emission during the oven charging period:.

(a) Principle. The visible emissions emitted from charging systems and oven ports are to be determined visually by an observer who is familiar with coke oven battery operations. Observations for five (5) consecutive charges are to be recorded unless the standard is exceeded before the five (5) charges are completed.

(b) Procedure. The observer is to stand such that he has a good view of the oven being charged. Upon observing any visible emission an accumulative stopwatch is started. The watch is stopped when the visible emission stops and is restarted when the visible emission reappears. The observer is to continue this procedure for the entire charging period. Visible emissions may occur simultaneously from several points during a charge; e.g., from around all drop sleeves at the same time. In this case, the visible emissions are timed collectively, not independently. Also, visible emissions may start from one (1) source immediately after another source stops. This will be timed as one (1) continuous visible emission. The following visible emissions are not to be timed:

1. Visible emissions from burning coal spilled on top of the oven or oven lid during charging;

2. Visible emissions that drift from the top of a larry car hopper, but have already been timed as a visible emission from the drop sleeve below the hopper.

(c) Recording charging emissions. The time recorded on the stop watch is the total time that visible emissions were observed during the charge.

(4) Determination of visible emissions from coke oven topside leaks:

(a) Principle. The visible emissions produced from leaking offtake systems, and topside lids are determined visually by an observer who is familiar with coke oven battery operations.

(b) Procedure. The observer shall inspect the coke oven battery by traveling the length of the battery topside at a steady pace, pausing only to make appropriate entries on the inspection report. Travel at a normal walking pace one (1) length of the coke oven battery shall constitute a run taking approximately four (4) minutes (for a seventy (70) oven battery) to complete. In performing a run to determine oven lid leaks, the observer shall walk the centerline of the battery looking far enough ahead (two (2) or four (4) ovens) of his travel to easily see the oven lids. During one (1) run, the observer shall record the number of total visible emissions from oven lids, and during another run the observer shall determine visible emissions from offtake systems, and collection mains, from the battery centerline or an alternative location (e.g., a catwalk). The total number of leaks from the topside shall be recorded on the inspection report sheet. The following emissions shall not be recorded:

1. Visible emissions from lids and standpipe caps that are opened during a decarbonization period (not to exceed three (3) ovens at any one (1) time) or charging period.

2. Steam emissions; this includes steam caused by the vaporization of wet luting material.

(c) Determination of percent topside leaks. The total number of leaks shall be observed during a run and then the percent of charge port and standpipe leaks shall be determined by using the formulas given in Appendix B to this regulation.

(5) Door inspection procedure:

(a) Observation. The inspector shall make his observations of door emissions from a location as close to the battery as safety and visibility conditions permit, but generally outside of the pusher machine or hot car tracks. The inspector may move to a closer observation point to determine the source of an emission. The inspector shall start the inspection procedure with an oven at either end of the battery and on either the push side or the coke side of the battery. The inspector shall observe and record any visible emission from the door. Visible emissions from the sealing edge around the perimeter of a door, or, in the case of the pusher side, from the door and the chuck door will be considered as door emissions. Visible emissions from structural leaks, such as buckstay or lintel leaks, will not be considered as door emissions. The inspector will then move to the adjacent door and check for door emissions in a like manner. The inspector will continue this procedure down the entire length of the battery. If a temporary machine obstruction occurs blocking his view of a series of ovens, he may bypass those ovens and continue down the remainder of the battery, returning to check the bypassed ovens when he has completed that side of the battery. After the inspector has observed the doors on one (1) side of a battery, he shall then proceed directly to the opposite side of the battery and again start at

one (1) end of the battery repeating the same procedure as for the previous side.

(b) Determination of percent leaking doors. The total number of leaking doors shall be observed on both sides of the coke oven battery and then the percent of leaking doors shall be determined using the formula given in Appendix C to this regulation.

(6) Determination of quenching visible emissions. The inspector shall make his observations of quenching emissions from a position where he can observe the quench plume. The inspector observes all emissions from the time the wharf car enters the quench tower until the time it leaves the tower after the quench. The maximum opacity of the plume observed against a contrasting background is recorded. If water vapor or mist is present, the opacity is determined after the water vapor or mist is no longer visible in the plume.

(7) Determination of pushing visible emissions. The inspector shall make his observation from a position where he can observe emissions from the coke oven door and from the hot car as the emissions rise above the collector main. Emissions shall be observed from the time the door removal has been completed until the hot car has entered the quench tower.

Section 6. Compliance Timetable. The owner or operator shall have demonstrated compliance with the standard in Section 3(5)(b) of this regulation on or before December 31, 1980. Compliance with the standard in Section 3(2) of this regulation shall be demonstrated on or before December 31, 1982. Compliance with all other provisions of this regulation shall have been demonstrated on or before June 6, 1979.

APPENDIX A TO 401 KAR 61:140
Formula for determining
sulfur compounds expressed as SO_2)
contained in coke oven gas.

$$\text{Sulfur compounds in coke oven gas} = \frac{C_{swg}V_{swg} + C_{tg}V_{tg}}{V_{fg}}$$

Where:

C_{swg} = the concentration of total reduced sulfur in the sweet gas expressed as SO_2;

C_{tg} = the concentration of total reduced sulfur in the tail gas expressed as SO_2; and

V_{swg}, V_{tg}, V_{fg} = flow rates of sweet gas, tail gas and foul gas, respectively.

APPENDIX B TO 401 KAR 61:140
Formula for determining percent
charge port leaks.

$$\text{Percent charge port leaks} = \frac{\text{(total number of charging port leaks observed during run)}}{\text{(number of operating ovens x charging ports/oven)}} \times 100$$

Formula for determining percent standpipe leaks.

$$\text{Percent standpipe leaks} = \frac{\text{(total number of standpipe leaks observed during run)}}{\text{(number of operating ovens x standpipes/oven)}} \times 100$$

Visible emissions occurring during the decarbonization period as provided in Section 5(4)(b)1 of this regulation shall not be included in the formulas above.

APPENDIX C TO 401 KAR 61:140
Formula for determining the percent door leaks.

$$\text{Door leaks (\%)} = \frac{\text{(total number of leaking doors observed)}}{\text{(2 x number of operating ovens in the battery)}} \times 100$$

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation controls emissions from existing by-product coke manufacturing plants, and is being amended to change the test method for measuring total dissolved solids (TDS) in the make-up water. There is only one source in Kentucky which is subject to the proposed amendment, and that source is currently in compliance with the provisions of the proposed amendment.

(a) Direct and indirect costs or savings to those affected: None due to the proposed amendment.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None due to the proposed amendment.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements due to the proposed amendment.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: On December 1, 1982, the cabinet promulgated revisions to its regulation for the control of

emissions from existing by-product coke manufacturing plants, 401 KAR 61:140, and submitted those revisions to the U.S. Environmental Protection Agency (EPA) for its approval. In EPA's response to the submittal, James T. Wilburn, Chief, Air Management Branch, Air, Pesticides and Toxics Management Division stated that the regulation would be approvable if the cabinet changed the test method for measuring total dissolved solids (TDS) in the make-up water from Method 209B to Method 209C from the Standard Methods for the Evaluation of Water and Wastewater, 15th Edition, 1980. The cabinet is therefore amending this regulation to change the test method so that the regulation will be approved by EPA.

Method 209C differs from 209B in that the temperature of the drying oven is maintained at 103°C-105°C. Furthermore, since the only source affected by this amendment, Armco, Inc. - Coke Plant, I.D. No. 103-0340-0027, is already in compliance with the provision of this amendment (letter dated April 12, 1985, from D.E. Davisson, Environmental Engineer, Armco, Inc.).

There are no economic disadvantages to Kentucky caused by requiring this new test method, Method 209C.

Tiering:
Was tiering applied? No. Tiering was not applied because the proposed amendment is to change the test method to measure the total dissolved solids (TDS) in the make-up water, where no tiering is allowed.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on July 15 [June 13], 1986 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14	Extraordinary Occurrence Report
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-18	Assistant Duty Officers
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 03-00-01	Shift Assignment/Reassignment
KSR 03-00-02	Employee Dress and Personal Appearance
KSR 03-00-05	Intra-Agency Promotional Opportunity Announcements
KSR 03-00-06	Employee Time and Attendance
KSR 03-00-07	Travel Expense Reimbursement
KSR 03-00-08	Employee Tuition Assistance Reimbursement
KSR 03-00-10	Workers' Compensation
KSR 03-00-11	Equal Employment Opportunity Complaints
KSR 03-00-12	Employee Greivance Procedure
KSR 03-00-14	Prohibited Employee Conduct, Disciplinary Actions, and Appeal Process
KSR 03-00-15	Affirmative Action Program
KSR 03-00-16	Confidentiality of Personnel Records
KSR 03-00-19	Establishment of Personnel Records and Employee Right to Challenge Information Contained Therein
KSR 03-00-20	Personnel Selection, Retention and Promotion
KSR 03-00-21	Equal Employment Opportunities for Institutional Job Assignments and Job Classification Promotions
KSR 03-00-23	Work Planning and Performance Review (WPPR)
KSR 03-00-24	Inclement Weather and Employee Work Attendance
KSR 03-00-25	Medical Examination Requirements for New Employees
KSR 04-00-02	Staff Training and Development
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-03	Guidelines for Contractors
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery, or Death of an Inmate
KSR 08-00-09	Emergency Preparedness Training
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-14	Use of Force
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter (Added 6/13/86)
KSR 10-00-02	Special Management Inmates - Operations, Rules and Regulations for Unit D (Amended 6/13/86)
KSR 10-00-03	Special Needs Unit (Amended 6/13/86)
KRS 10-00-04	Unit D Admission/Release Ticket
KSR 11-00-01	Meal Planning for the General Population

KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-02 Sanitation and General Living Conditions
KSR 12-00-03 State Items Issued to Inmates
KSR 12-00-07 Regulations for Inmate Barbershop
KSR 13-00-01 Identification of Mentally Retarded Inmates
KSR 13-00-02 Regulations for Hospital Patients
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Dental Care for Inmates
KSR 13-00-05 Medical and Dental Sick Call
KSR 13-00-07 Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 13-00-08 Institutional Laboratory Procedures
KSR 13-00-09 Institutional Pharmacy Procedures
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates
KSR 13-00-15 Medical Alert System
KSR 13-00-16 Suicide Prevention and Intervention Program
KSR 14-00-01 Inmate Rights
KSR 14-00-02 A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 14-00-04 Inmate Grievance Procedure
KSR 15-00-01 Operational Procedures and Rules and Regulations for Unit A, B, and C (Amended 7/15/86)
KSR 15-00-02 Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
KSR 15-00-03 Governor's Meritorious Good Time Award
KSR 15-00-04 Restoration of Forfeited Good Time
KSR 15-00-05 Differential Status for SU (QUIT) Inmates
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08 Firehouse Living Area
KSR 16-00-01 Visiting Regulations (Amended 7/15/86)
KSR 16-00-02 Inmate Correspondence and Mailroom Operations (Amended 7/15/86)
KSR 16-00-03 Inmate Access to Telephones
KSR 17-00-01 Housing Unit Assignment
KSR 17-00-03 Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-04 Assessment/Classification Center Operations, Rules and Regulations
KSR 17-00-05 Dormitory 10 Operations
KSR 17-00-06 Identification Department Admission and Discharge Procedures
KSR 17-00-07 Inmate Personal Property (Amended 7/15/86
KSR 18-00-01 Special Management Inmates - Unit D Classification
KSR 18-00-04 Returns from Other Institutions
KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center
KSR 18-00-06 Classification
KSR 18-00-07 Special Notice Form
KSR 19-00-01 Inmate Work Incentives
KSR 19-00-02 On-the-Job Training Program (Amended 7/15/86)
KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations
KSR 20-00-01 Vocational School Referral and Release Process
KSR 20-00-03 Academic School Programs
KSR 20-00-04 Criteria for Participation in Jefferson Community College Program
KSR 20-00-08 Integration of Vocational and Academic Education Programs
KSR 21-00-01 Legal Aide Office and Law Library Services and Supervision
KSR 21-00-02 Inmate Library Services
KSR 21-00-03 Library Services for Unit D
KSR 22-00-03 Inmate Organizations (Amended 7/15/86)
KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03 Religious Programming
KSR 25-00-01 Discharge of Residents to Hospital or Nursing Home
KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03 Pre-Parole Progress Report

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: July 15, 1986
FILED WITH LRC: July 15, 1986 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 22, 1986 at 9 a.m. on the 10th Floor, Room 4471 in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 493 employees of the Kentucky State Reformatory, 1,455 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: Same as (2)(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in

conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on July 15 [June 13], 1986 and hereinafter should be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-01	General Guidelines for KSP Employees
KSP 020000-02	Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave
KSP 020000-03	Work Planning and Performance Review (WPPR)
KSP 020000-04	Employee Disciplinary Procedure
KSP 020000-05	Proper Dress for Uniformed and Non-Uniformed Personnel
KSP 020000-06	Employee Grievance Procedure
KSP 020000-07	Personnel Registers and Advertisements
KSP 020000-09	Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files
KSP 020000-10	Overtime Policy
KSP 020000-15	Legal Assistance
KSP 020000-20	Equal Employment Opportunity Complaints
KSP 020000-23	Recruitment and Employment of Ex-Offenders
KSP 020000-24	Educational Assistance Program
KSP 020000-29	Promotional Opportunity Announcement Program
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment
KSP 030000-05	Inmate Personal Funds (Amended 7/15/86)
KSP 030000-06	Inmate Commissary Program
KSP 040000-02	Inmate Records Section (Amended 6/13/86)
KSP 040000-08	Inmate Equal Opportunity Policy
KSP 050000-14	Searches of Inmates, Visitors, Staff, Vehicles, Cells and Area Shakedown and Preservation of Evidence (Amended 6/13/86)
KSP 060000-01	Special Security Unit
KSP 060000-02	Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units (Amended 7/15/86)
KSP 060000-04	Protective Custody Unit
KSP 060000-11	Criteria for Disciplinary Segregation and Incentive Time Reduction Program
KSP 060000-12	Maximum Protective Custody
KSP 070000-01	Hospital Services
KSP 070000-02	Sick Call
KSP 070000-03	Health Evaluations
KSP 070000-04	Consultations
KSP 070000-05	Emergency Medical Procedure
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs
KSP 090000-03	Correctional Industries
KSP 100000-02	Visiting Program (Amended 6/13/86)
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-04	Inmate Grooming and Dress Code
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items (Amended 6/13/86)
KSP 100000-06	Mail (Amended 6/13/86) (Amended 7/15/86)
KSP 100000-07	Inmate Telephone Access
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures
KSP 100000-11	Authorized and Unauthorized Property for Inmates (Amended 7/15/86)
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Standards for Fire Safety, Sanitation and Security of all Cells
KSP 100000-18	Inmate Grievance Committee Hearings (Amended 7/15/86)
KSP 100000-20	Legal Services Program (Amended 6/13/86)
KSP 100000-21	Photocopies for Non-Indigent Inmates with Special Court Deadlines (Deleted 6/13/86)
KSP 100000-22	Special Management Unit Legal Services Program
KSP 100000-23	Inmate Legal Office/Legal Library
KSP 110000-03	Governor's Meritorious Good Time Award Committee
KSP 110000-04	Pre-Parole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration

KSP 110000-08	Award of Meritorious Good Time (Amended 5/15/86)
KSP 110000-10	Special Needs Inmates
KSP 110000-11	Classification Committee - Transfer Requests
KSP 110000-12	Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 110000-19	Custody/Security Guidelines
KSP 120000-04	Academic Education
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-24	Muslim Services
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: July 15, 1986
FILED WITH LRC: July 15, 1986 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 22, 1986 at 9 a.m., on the 10th Floor, Room 4471 in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 305 employees of the Kentucky State Penitentiary, 745 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: Same as (2)(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on July 15 [May 15], 1986 and hereinafter should be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Staff
NTC 01-11-01	Political Activities of Merit Employees [(Amended 5/15/86)]
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-01-02	Fiscal Management: Accounting Procedures
NTC 02-01-03	Fiscal Management: Checks
NTC 02-01-04	Fiscal Management: Insurance
NTC 02-03-01	Fiscal Management: Audits
NTC 02-08-01	Inmate Canteen
NTC 02-12-01	Inmate Personal Accounts
NTC 03-01-01	Employee Dress and Personal Appearance [(Amended 5/15/86)]
NTC 03-02-01	Prohibited Employee Conduct [(Amended 5/15/86)]
NTC 03-03-01	Staff Members Suspected of Being Under the Influence of Intoxicants [(Amended 5/15/86)]
NTC 03-04-01	Shift Assignments and Transfers [(Amended 5/15/86)]
NTC 03-05-01	Work Planning and Performance Review
NTC 03-06-01	Worker's Compensation
NTC 03-07-01	Merit System Registers and Placement of Advertisements
NTC 03-08-01	Procedures for New Employees Reporting for Employment [(Added 5/15/86)]
NTC 03-09-01	Maintenance, Confidentiality and Challenge of Information Contained in Employee Personnel File [(Amended 5/15/86)]
NTC 03-10-01	Employment of Ex-Offenders

NTC 03-13-01 Travel Reimbursement for Official Business and Professional Meetings [(Amended 5/15/86)]
NTC 03-14-01 Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees [(Amended 5/15/86)]
NTC 03-14-02 Promotional Opportunities [(Amended 5/15/86)]
NTC 03-15-01 Time and Attendance; Accumulation and Use of Accrued Time [(Amended 5/15/86)]
NTC 03-15-02 Sick Leave Abuse [(Amended 5/15/86)]
NTC 03-15-03 Inclement Weather and Emergency Conditions
NTC 03-16-01 Affirmative Action Program and the Promotion of EEO [(Amended 5/15/86)]
NTC 03-17-01 Employee Grievance Procedure (Added 7/15/86)
[NTC 03-17-02 Review Committee]
NTC 03-18-01 Educational Assistance Program
NTC 03-19-01 Holding of Second Jobs by Employees [(Amended 5/15/86)]
NTC 04-01-01 Training and Staff Development
NTC 04-04-01 Firearms and Chemical Agents Training [(Added 5/15/86)]
NTC 06-01-01 Offender Records
NTC 06-01-02 Records - Release of Information
NTC 06-01-03 Taking Offender Record Folders onto the Yard (Amended 7/15/86)
NTC 08-05-01 Duties of Fire Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-05-05 Control of Flammables, Toxic, Caustic, and Other Hazardous Chemicals and Janitorial Supplies
NTC 10-01-01 Special Management Inmates
NTC 10-01-02 Legal Aide Visits for Special Management Inmates
NTC 11-03-01 Food Services: General Guidelines (Amended 7/15/86)
NTC 11-04-01 Food Service: Meals (Amended 7/15/86)
NTC 11-04-02 Menu, Nutrition and Special Diets (Amended 7/15/86)
NTC 11-05-02 Health Standards/Regulations for Food Service Employees
NTC 11-06-01 Inspections and Sanitation (Amended 7/15/86)
NTC 11-07-01 Purchasing, Storage and Farm Products (Amended 7/15/86)
NTC 12-01-01 Institutional Inspections
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02 Personal Hygiene Items
NTC 13-01-01 Emergency Medical Care Plan (Amended 7/15/86)
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Pharmacy
NTC 13-05-01 Dental Services
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Disabled and Infirm Inmates
NTC 13-13-01 Medical Alert System
NTC 13-14-01 Management of Chemically Dependent Inmates
NTC 13-15-01 Health Education for Inmates
NTC 13-16-01 Continuity of Health Care
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Psychological Services
NTC 13-19-02 Mentally Retarded Inmates
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 14-01-01 Legal Services Program (Amended 7/15/86)
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for Dormitories
NTC 15-04-01 Inmate Identification [(Amended 5/15/86)]
NTC 16-01-01 Mail Regulations
NTC 16-02-01 Visiting [(Amended 5/15/86)]
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm Visiting (Amended 7/15/86)
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control [(Amended 5/15/86)]
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property
NTC 17-01-03 Unauthorized Inmate Property
NTC 17-01-04 Disposition of Unauthorized Property
NTC 17-03-01 Assessment/Orientation
NTC 18-01-01 Pre-Parole Progress Report
NTC 18-01-02 Parole Eligibility Dates
NTC 18-02-01 Classification
NTC 18-03-01 Special Notice Form
NTC 18-05-01 Transfers to Other Institutions
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01 Inmate Work Program
NTC 19-01-02 Restricted Outside Work Crew (Added 7/15/86)
NTC 19-01-03 Temporary Leave from Job Assignment (Added 7/15/86)
NTC 20-01-01 Academic School Program (Amended 7/15/86) [(Amended 5/15/86)]
NTC 21-01-01 Library Services (Amended 7/15/86)
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01 Religious Services
NTC 23-03-01 Marriage of Inmates
NTC 24-04-01 Honor Status
NTC 24-05-01 Unit Management
NTC 25-01-01 Release Preparation Program
NTC 25-01-02 Temporary Release/Community Center Release
NTC 25-02-01 Funeral Trips and Bedside Visits
NTC 25-03-01 Inmate Release Procedure
NTC 26-01-02 Certification of Volunteers and Guests

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: July 15, 1986
FILED WITH LRC: July 15, 1986 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 22, 1986 at 9 a.m., on the 10th Floor, Room 4471 in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General

Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 214 employees of the Northpoint Training Center, 647 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: Same as (2)(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on July 15 [June 13], 1986 and hereinafter should be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Non-Expendable Personal Property
KCIW 02-03-03	Criteria for Selection of Bidders and Vendors
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen/Staff Canteen
KCIW 02-07-01	Release of C.E.T.A. Money Earned
KCIW 03-01-01	Travel Expense Reimbursement
KCIW 03-02-01	General Orders for Staff
KCIW 03-02-02	Inclement Weather and Emergency Conditions
KCIW 03-03-01	Employee Grievance Procedure
KCIW 03-05-01	Employee Personnel File
KCIW 03-06-01	Affirmative Action and the Equal Employment Opportunity Complaint Procedure
KCIW 03-08-01	Employee Performance Evaluations
KCIW 03-09-01	Payroll and Personnel Manning Records
KCIW 03-10-01	Promotion Committee
KCIW 03-11-01	Personnel Registers
KCIW 03-12-01	Criminal History Checks on all Personnel and the Recruitment and Employment of Ex-Offenders
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Operations Manager
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Standards, Regulations for Food Service Workers
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry Facilities/Clothing Issuance
KCIW 12-02-03	Donated Items
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 13-01-01	Provision of Medical ard Dental Care
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-03-03	Outside Hospital Security
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines (Amended 7/15/86)
KCIW 13-08-01	Medical Exams for New Employees
KCIW 14-01-02	Inmate Rights (Amended 7/15/86)

KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes (Amended 7/15/86)
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-01-01	Offenses and Penalties
KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Incentive Levels System
KCIW 16-01-01	Inmate Correspondence
KCIW 16-01-02	Inmate Mail Distribution
KCIW 16-01-03	Staff Mail
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting Regulations (Amended 6/13/86)
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Vendor Packages, Appliance Orders and Drug Store Orders
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations (Amended 7/15/86)
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting (Amended 7/15/86)
KCIW 17-05-01	Inmate Personal Property
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Up-grade Programs and Release Preparation Program (Amended 7/15/86)
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records (Amended 7/15/86)
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor (Amended 7/15/86)
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment (Amended 7/15/86)
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Pre-Parole Progress Report (Amended 7/15/86)
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs (Amended 7/15/86)
KCIW 25-03-01	Escorted Leave into the Community

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: July 15, 1986
FILED WITH LRC: July 15, 1986 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 22, 1986 at 9 a.m. on the 10th Floor, Room 4471 in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 76 employees of the Kentucky Correctional Institution for Women, 163 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: Same as (2)(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:080. Corrections Cabinet Manuals.

RELATES TO: KRS Chapters 196, 197, 439
PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in

the Corrections Cabinet the following policies and procedures are incorporated by reference on July 15 [June 13], 1986 and hereinafter should be referred to as Corrections Cabinet Manuals. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

Offender Records Manual - None.
Stock Procedure Manual - None [Yes].
Food Services Manual - Yes [None].
Classification Manual - None.

GEORGE W. WILSON, Secretary
APPROVED BY AGENCY: July 15, 1986
FILED WITH LRC: July 15, 1986 at noon
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 22, 1986 at 9 a.m. on the 10th Floor, Room 4471 in the State Office Building. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara W. Jones
(1) Type and number of entities affected: 2,008 employees of the Corrections Cabinet, 4,685 inmates, 3,378 parolees, 5,318 probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None. All of the costs involved with the implementation of the regulation are included in the operational budget.
2. Continuing costs or savings: Same as (2)(a)1.
3. Additional factors increasing or decreasing costs: Same as (2)(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All policies are administered in a uniform manner.

JUSTICE CABINET
Department of State Police
(Proposed Amendment)

502 KAR 30:060. Dissemination of criminal history record information.

RELATES TO: KRS 17.115, 17.140, 17.147, 17.150
PURSUANT TO: KRS 15A.150, 17.080
NECESSITY AND FUNCTION: KRS 17.115 provides that the Justice Cabinet shall cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification. KRS 17.147(6) provides that the Department of State Police shall supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs. Further, KRS 17.150(6) authorizes the Secretary of Justice to adopt regulations to carry out the provisions of the criminal history record information system.

Section 1. Dissemination of Criminal History Record Information. Use of CHRI disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given. No agency or individual shall confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself. Policies on dissemination of CHRI shall be regulated by the specific category of criminal history record information. Those categories shall be inclusive of, but not limited to:
(1) "Nonconviction data" shall, with the exception of the computerized Kentucky State Police files accessed by an open record request directly to the Department of State Police, be limited, whether directly or through an intermediary, only to:
(a) Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment;
(b) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court order, as determined by the General Counsel, Justice Cabinet;
(c) Individuals and agencies pursuant to a specific agreement as outlined in 502 KAR 30:040 with the Department of State Police, to provide services required for the administration of criminal justice pursuant to that agreement.
(d) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with Records. Said agreement shall limit the use of data to research, evaluative or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and provide sanctions for violations of the agreement. This dissemination limitations does not apply to conviction data.
(2) "Nonconviction data," from the computerized Kentucky State Police files, shall be disseminated by the Department of State Police only, pursuant to Kentucky Revised Statutes, Chapter 61.
(3) Juvenile records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order.

(4) Furnishings of sex crime convictions to potential employers of persons with authority over children. Criminal history record information of a conviction nature involving specified sex crimes shall be disseminated to potential employers of those individuals that have authority over children. Those respective sex related crimes shall be: rape 1st, 2nd and 3rd degree; sodomy 1st, 2nd, 3rd and 4th degree; sexual abuse 1st, 2nd and 3rd degree; sexual misconduct; indecent exposure; prostitution; promoting prostitution 1st, 2nd and 3rd degree; permitting prostitution; incest; use of a minor in a sexual performance; promoting a sexual performance by a minor; distribution of matter portraying a sexual performance by a minor; promoting sale of material portraying a sexual performance by a minor; advertising material portraying a sexual performance by a minor; and using minors to distribute material portraying a sexual performance by a minor; and unlawful transaction with a minor in the 1st degree.

(a) To obtain criminal history record information regarding sex related convictions, a perspective employee/volunteer through the potential employer must complete a form prescribed by Records. The form shall be inclusive of a waiver that releases the Kentucky State Police from liability with regard to the dissemination of sex related conviction data. The form shall also include the name of the potential employer, signature of the perspective employee/volunteer, a witness signature, and a space for a thumb print of the perspective employee/volunteer. In addition to the aforementioned personal identifiers, the form shall include sex, race, date of birth, social security number and previous addresses.

(b) The perspective employer shall be responsible for the completion of the form as listed in paragraph (a) of this subsection and shall submit a check/money order from the applicant for four (4) dollars, made payable to the Kentucky State Treasurer. In order to expedite the response to the respective employer and notification of record check to the employee/volunteer, two (2) self-addressed stamped envolopes (one (1) to the record subject, one (1) to the employer) for return results of criminal history record analysis shall be submitted with the initial record request.

Section 2. As outlined in 502 KAR 30:040, the computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRI from the computerized criminal history record information system shall log all disseminations of CHRI. Said log shall contain at least the following information: the name of the agency and individual receiving CHRI, the date of release, the individual to whom the CHRI relates, the items of CHRI released, and, in the case of secondary dissemination, the agency which provided the CHRI. Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHRI dissemination.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: July 8, 1986
FILED WITH LRC: July 10, 1986 at 2 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled on August 21, 1986, at 1 p.m. in the Library Conference Room, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing at least five days before the hearing, the following individual: Lucy B. Richardson, Attorney, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy Cravens Snell
(1) Type and number of entities affected: Schools and child care centers who employ individuals who supervise or discipline minors as specified in KRS 17.165.
(a) Direct and indirect costs or savings to those affected: No change in application fee. The statute, KRS 17.165, changed who is responsible for payment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: Requires more record searches.
(a) Direct and indirect costs or savings: There will be some additional costs which should be offset by the application fees.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: The statute covers more individuals and more crimes.
(b) Reporting and paperwork requirements: As required by statute.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: Overlapping statute: KRS 17.150.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 9:074. Kentucky highway use license, records and taxes.

RELATES TO: KRS 138.655 to 138.725
PURSUANT TO: KRS 138.725
NECESSITY AND FUNCTION: KRS 138.725 makes the Department of Vehicle Regulation responsible for the application of the Kentucky motor carrier fuel use tax and weight distance tax to motor carriers covered by KRS 138.655 to 138.725. This regulation provides procedures for licensees to follow in order to comply with the statutes.

Section 1. Application for Kentucky Highway Use License. Every motor carrier as defined in

KRS 138.655(5) shall apply for and obtain on a department approved form a license before using or continuing to use the public highways in the state. The department shall issue a KYU license number to each qualified motor carrier, and the department [carrier] shall cause said license number to be displayed on each [a] motor vehicle identification card issued by it [by the department]. [The card shall be carried in each vehicle operated by the carrier at all times.]

Section 2. Bonds-Cash Deposit. (1) Every motor carrier and heavy equipment motor carrier, pursuant to the provisions of KRS 138.655 to 138.725 [and 138.670] shall file with the department at the time of application for a license a corporate bond, cash bond, or security approved by the department. The applicant for the license shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee. The bond will be conditioned as required in KRS 138.670, and the department shall administer the bond as provided in KRS 138.670.

(2) In addition to the bond imposed in subsection (1) of this section, if it appears that a person, firm, or corporation, which has been issued a transportaion plan involving the reporting and payment of tonnage taxes, has no assets in Kentucky, or has been involved in bankruptcy proceedings within seven (7) years past, or, is of doubtful financial stability, the department may require such person, firm, or corporation, to post a corporate surety bond, with a surety authorized to transact business in Kentucky, or a cash bond, equal to one (1) quarter's anticipated tonnage tax liability, as a condition precedent to the implementation and conduct of operations under the transportation plan issued to such person, firm, or corporation. The bond shall be in such form and amount as the cabinet shall prescribe and the cabinet shall administer the bond as provided in KRS 138.670.

Section 3. Registration for Highway Use Tax. (1) For the purpose of this section registration shall mean the registration of the licensee for the purpose of a tax imposed by KRS 138.660 and shall be required of all motor carriers as defined in KRS 138.655(5). The current registration period shall be deemed that quarterly period for which the tax [is due] under KRS 138.660 is due or required to be reported on the quarterly return. The applicant for the license shall apply to the department for a motor vehicle identification card on forms prescribed and furnished by the department. [The completion by the applicant and submittal to the department for validation shall be necessary prior to the authority of the applicant to operate a motor vehicle on the public highways of Kentucky.] A motor carrier identification card shall be issued which contains the name and address of the owner or operator, the identification of the vehicle, and such other information as may be requested, including, but without limitation, the KYU license number issued to the applicant for the use of the public highways of Kentucky. The identification card shall show the vehicle combined license weight or the actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined hereinabove.

(2) Definitions.

(a) "Combined license weight" shall mean the declared combined maximum gross weight of the vehicle and any towed unit for the registration purposes for the current registration period as defined hereinabove; or the highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined herein.

(b) "Declared gross weight" shall mean the same as paragraph (a) of this subsection.

(c) "Gross weight" shall mean the unloaded weight of the vehicle plus the maximum load to be carried by it on the highways of the Commonwealth of Kentucky.

(3) The identification card shall be displayed in the cab of the vehicle at all times. Failure to display the identification card shall constitute a violation of KRS 138.665.

Section 4. Communications, Business Names and License Address. All licensees must immediately report any change in principal business address, legal status or business name to the department. All motor carrier operations must be conducted in the name in which the license and the identification card is issued or the duly assumed business name of the licensee, as it appears on the license. All licensees are required to use the name utilized in the application for the license in all documents relating to their operations and in all correspondence with the department. All correspondence with the department shall be addressed as follows: Kentucky Department of Vehicle Regulation, Division of Motor Carriers, Post Office Box 2007, Frankfort, Kentucky 40602.

Section 5. Instruments Filed Become Permanent Records. All bonds filed with the department as required by statute are permanent records and cannot be returned to licensee or removed from the custody of the department as long as the licensee is subject to the Kentucky Statutes.

Section 6. Kentucky Highway Use License for Leased Vehicles. (1) Any person leasing or renting a commercial motor vehicle to a lessee who is engaged in private carriage, where the operator of such vehicle is required to have a Kentucky Highway Use License may obtain the license by making application to the department and complying with the appropriate administrative [rules and] regulations. The licensee shall entitle the lessee to operate the leased or rented vehicle under the lessor's license.

(2) The lease shall be carried in the vehicle and the required motor vehicle identification [cab] card shall be in the lessor's name and the lessor shall make the required quarterly reports and pay all taxes which may become due by virtue of the operation of the motor vehicle.

(3) A [motor vehicle which is leased to a] certificated carrier leasing a motor vehicle will be required to have the Kentucky Highway Use License and the lessee shall be responsible for the payment of any tax which may become due.

(4) A lessor of motor vehicle equipment who makes an application for a license under this section shall furnish the department a copy of the standard lease or rental agreement as well as the address of the place of business where

the lessor's records are maintained. A current list of all lessees who lease equipment from the lessor and who will use the lessor's Kentucky Highway Use License shall be filed with the department. This list shall contain the name of the lessee, the lessee's address, the number of vehicles leased to each lessee and other pertinent information which the department may require. The list required herein shall be updated and kept current on a semi-annual basis by the lessor.

Section 7. Authorized Deductions on Quarterly Returns. Every person licensed as a motor carrier may deduct on his quarterly tax return the amount of tax paid on fuel at the time of purchase, provided the purchase is made in Kentucky and the Kentucky motor fuel tax has been paid. The tax credits, and tax refunds, authorized by KRS 138.695 to be granted to a taxpayer eligible therefor shall not exceed in amount the actual amount of the subject taxes paid by said taxpayer, exclusive of any applicable interest thereon due the taxpayer by operation of law. A valid receipt must be obtained as evidence of purchase from the person making the sale or delivery.

(1) To be a [The] valid receipt [is] one (1) must meet the following criteria [which]:

(a) The purchase receipt shall be the original prepared by a station or vendor located in the state of Kentucky and shall have an imprinted Kentucky address. Receipts that have an imprinted Kentucky address, but include other station locations outside of Kentucky are invalid.

(b) The following is included on the receipt:

1. Name and station location of the vendor;
2. Date of purchase;
3. Number of gallons purchased;
4. Type of fuel purchased;
5. Company unit number of vehicle or registration number of unit; and
6. Licensee's name.

(c) The name and address of the vendor shall be preprinted or imprinted, which includes, but is not restricted to, credit card machines. Station receipts that are identified only by impressed rubber stamp markers or handwritten are not valid.

(2) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same information as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

(3) Bulk or storage purchasers of fuel shall maintain a withdrawal or disbursement record when such fuel is used in taxable highway or road units. This record shall be kept on all units fueling from this tank showing the unit fueled, gallons withdrawn, and the date of withdrawal. Tax on bulk purchases shall be paid at the time of purchase in accordance with KRS 138.220 and 234.320. If a motor carrier uses tax free bulk storage fuel to fuel taxable units (highway units), tax will be levied on total fuel purchased for bulk storage.

(a) Any use of fuel from a tax free storage tank without adequate records to prove on-highway use shall be taxable. Approved location of tax free storage shall be issued by the Revenue Cabinet before tax free fuel is purchased.

(b) Credit for fuel purchase receipts other than for the taxable units shall not be allowed.

(4) In instances where fuel is purchased by trip-leased units and the lessee is responsible for the Kentucky highway tax, all receipts shall be made in the name of the lessee. Receipts made out in the name other than the person or company responsible for the fuel tax shall be invalid.

(5) Certain motor vehicles including, but not limited to, mixers, pumps, load lifts, refrigeration equipment, utilize power takeoff equipment and similar devices which involve consumption of fuel from the same tanks that serve to power the operation of the vehicles upon the highways. Operators of those types of vehicles utilizing such equipment, may adjust the miles per gallon entry on their Kentucky highway use tax returns to reflect fuel actually consumed by such power takeoff equipment in operations over the highway, provided, however, that any adjustment claimed therefor must be substantiated by adequate records, and is subject to audit by the Transportation Cabinet. Nothing herein contained shall be construed as authorizing a taxpayer to claim tax credit in respect to taxes paid on fuels which are actually consumed on off-highway operations.

Section 8. Cancellation of License. (1) If a motor carrier fails to comply with the terms of KRS 138.655 to 138.725, or these regulations, its Kentucky Highway Use Tax License may be cancelled. Reasons for cancellation include, but are not limited to, the following:

(a) Failure to file tax return thirty (30) days after the due date. The licensee will be mailed a second notice or reminder and be given fifteen (15) days to file the return if he has not filed his tax return within thirty (30) days after the due date. If the licensee fails to comply with the second notice, the license will be subject to cancellation.

(b) Failure to pay additional taxes assessed by the department. [To be reinstated after cancellation of license, the carrier must prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax Returns.]

(c) Failure by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the records are produced at the place stated in the demand.

Section 9. Procedure upon Cancellation of License. (1) Upon cancellation of Kentucky Highway Use License in accordance with the provisions of KRS 138.675 and after notice to the carrier by mailing the same to the address on file in the department, the carrier shall immediately return to the department the license and all motor vehicle identification [cab] cards issued to such carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a motor vehicle identification [cab] card after notice of revocation of the highway use license shown thereon, shall be a violation of this regulation.

Section 10. Coal Shippers License and Tax Status Changes of All Motor Carriers. (1) All persons liable or responsible for payment of ton

tax or payments due to cooperative agreements and transporting coal over the state maintained highways system by motor vehicles exceeding the gross weights or gross axle weights prescribed by the Secretary of Transportation pursuant to KRS 189.222 shall obtain an approved tax reporting license from the Department of Vehicle Regulation. Prior to the issuance of the tax reporting license, the licensee must obtain a certified transportation plan from the Department of Vehicle Regulation in accordance with 601 KAR 35:020. The Department shall assign each taxpayer a license number.

(2) Licensees referenced in subsection (1) of this section that have an approved cooperative agreement shall pay their tax in accordance with the terms of the cooperative agreement.

(3) Licensees referenced in subsection (1) of this section that do not have a cooperative agreement shall report and pay their coal ton tax as follows:

(a) The coal ton tax shall be reported on the requisite forms as prescribed by the Transportation Cabinet.

(b) The coal ton tax shall be reported and paid monthly.

(c) The coal ton tax returns are due within twenty (20) days following the close of each monthly period.

(4) The exempt and/or non-exempt status of each vehicle in regard to Kentucky motor fuel surtax or weight distance tax may be changed only once during each quarter, (January 1 through March 31; April 1 through June 30; July 1 through September 30; October 1 through December 31). A tax liability shall not change because of a status change, until the first day of the next succeeding quarter after the status is changed. The change from non-exempt status to exempt status requires that an application be filed with the Transportation Cabinet.

Section 11. Tax Liability and Protest Procedures. (1) The licensee will be mailed a supplemental tax statement, if additional tax is found to be owed as the result of an audit or found as the result of an examination of licensee's tax return. The licensee has thirty (30) days to pay or protest to the department per KRS 131.110 [138.110] in writing any assessment or tax liability imposed by the department. A protest must be accompanied by a supporting statement identifying specific adjustments being protested and setting forth the reasons upon which the protest is being made.

(2) If the licensee so desires, he may, within thirty (30) days, protest directly to the Kentucky Board of Tax Appeals.

(3) The department will acknowledge receipt of the protest and if protest is acceptable, a tax conference will be set between the department and licensee within sixty (60) days of the protest. The department will notify the licensee within thirty (30) days its decision to deny or accept the reasons of the protest. If denied, the licensee may protest to the Kentucky Board of Tax Appeals.

(4) If the licensee does not acknowledge the tax statement within thirty (30) days, a reminder will be sent to licensee demanding payment within fifteen (15) days. If within fifteen (15) days, the taxes have not been remitted to the department, a demand will be made against the licensee's surety bond. Any balance of unpaid taxes will be submitted to the Transportation Cabinet's [department's] legal section for collection.

Section 12. Penalties. In addition to any other penalties which may be imposed under KRS 138.990 and any other applicable laws, the licensee shall be subject to the civil penalties provided for in KRS 138.775.

Section 13. Inspection. Any highway enforcement officer or state police officer may inspect the vehicle identification card, license registration, driver's log, lease, trip sheet or shipping document to determine if the vehicle is qualified to operate on the highways of the state of Kentucky. The law enforcement officer may also weigh vehicles to determine if the gross weight conforms to the licensed weight on the vehicle identification card.

Section 14. Records Disposition. The department will retain the active file of KYU tax returns for at least five (5) years. An inactive KYU license will be retained two (2) years after cancellation.

Section 15. Reinstatement of License. (1) If the carrier desires to be reinstated after cancellation, the carrier must:

(a) Prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax returns.

(b) Submit quarterly returns for all missed periods.

(c) Pay all taxes for missed returns plus penalties and interest.

Section 16. Licensee taxpayers, for purposes of ease in tax reporting compliance, and department administration and audit convenience, may, upon written request to the department and receipt of written permission from the department, report miles operated upon Kentucky highways on the basis of the current Household Goods Bureau mileage guide, and supplements thereto, in lieu of reporting on the basis of actual miles operated, provided, however, that such mileages are reported in respect to movements between the points and over the routes actually operated, and provided that such mileages would not result in a consistent understatement of actual miles operated on Kentucky highways.

Section 17. Maintenance of Records. (1) Licensees reporting and paying taxes under the cooperative agreement, certified transportation plan, or ton tax provision shall keep and maintain records of all coal shipments over the state maintained public highways.

(2) Each licensee shall also maintain weight tickets, bona fide third party documents or other documents to accurately verify tonnage that will reflect the true tonnage transported over said highways and the distance that such tonnage was transported over such highway.

(3) The weight ticket or third party document shall include but not be limited to the following:

(a) Name and identification number of the mine owner, severer, processor, broker or shipper.

(b) Name and KYU number of person transporting coal.

(c) Transporter's assigned unit vehicle number.

(d) Points of origin and destination.

(4) All records shall be maintained for five (5) years for audit and tax purposes.
(5) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if such records contain the same information as required in subsection (1) of this section, provided such records meet acceptable auditing tests.

C. LESLIE DAWSON, Secretary
JOHN K. PENROD, Commissioner
APPROVED BY AGENCY: June 27, 1986
FILED WITH LRC: July 1, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public comment hearing will be held on this proposed amended administrative regulation at 9:30 a.m. local prevailing time on August 26, 1986. The hearing will be held in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets in Frankfort, Kentucky. Any person who intends to attend this hearing must, in writing, by August 21, 1986, so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 30,000 motor carriers authorized to work in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: Section 7 will keep motor carriers from an $8 million windfall tax credit on taxes not paid.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Section 7(5) has been the practice of the Transportation Cabinet for several years.
(b) Reporting and paperwork requirements: No new requirements beyond existing requirements.
(2) Effects on the promulgating administrative body: Will likely forestall a law suit.
(a) Direct and indirect costs or savings: Section 7 will keep motor carriers from tying up $8 million windfall tax credit on taxes they did not pay.
1. First year: Same as above.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Review of quarterly reports will continue.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would have been to not amend the subject administrative regulation. This was rejected because a highway use tax cannot be charged for off-highway use and because a company cannot receive a tax credit greater than the tax paid.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 186.695 as amended appears to allow a tax credit greater than tax paid.
(a) Necessity of proposed regulation if in conflict: A company cannot receive a tax credit greater than the tax paid.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes.
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Not applicable.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:060. Construction within jurisdictional airspace [conical surface permit].

RELATES TO: KRS 183.861 to 183.890
PURSUANT TO: KRS 183.861
NECESSITY AND FUNCTION: To regulate the construction and alteration of structures in the zoned airspace of the state which present an obstruction to safety of air navigation.

Section 1. Except as provided in 602 KAR 50:090, no person shall construct or alter any structure which constitutes an obstruction as defined by the regulations of the commission, unless the person who intends to construct or alter such a structure obtains a permit from the commission in accordance with the procedures set forth in the regulations of the commission.

Section 2. The commission shall consider the factors set forth in KRS 183.868 and 183.870 in approving or disapproving an application for a permit under Section 1 of this regulation.

Section 3. Any change or transfer in the care, custody, control or ownership of a structure previously permitted by the commission shall require the original owner to notify the commission in writing of the name and address of the new owner on a form prescribed by the commission, however, the new owner shall comply with all conditions and requirements of the originally issued permit for the transferred structure unless properly amended by the commission.

Section 4. Power lines existing prior to the effective date of this regulation for which no permit has been issued may continue in their present configuration so long as said lines are not subsequently determined to be a hazard to air navigation by the Kentucky Airport Zoning commission. However, any person proposing to alter or reconstruct any wire, transmission, distribution or other power line subsequent to September 1, 1983 that exceeds 200 feet above the ground shall be required to obtain all necessary permits from the commission and comply with all applicable marking and lighting requirements in accordance with the rules and regulation of the commission.

C. LESLIE DAWSON, Acting Secretary
STEPHEN REEDER, Chairman
APPROVED BY AGENCY: July 15, 1986
FILED WITH LRC: July 15, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public comment hearing on this proposed amended administrative regulation will be held August 26, 1986 at 8:30 a.m., in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons

who intend to attend this hearing must in writing no later than August 21, 1986 so notify: Sandra Pullen, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Martin
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: No change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: No change.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Tiering not applicable for regulation change.

TRANSPORTATION CABINET
Kentucky Airport Zoning Commission
(Proposed Amendment)

602 KAR 50:090. Application procedure.

RELATES TO: KRS 183.869, 183.870, 183.871
PURSUANT TO: KRS 183.861
NECESSITY AND FUNCTION: This regulation outlines rules governing procedure that a person must follow in order to obtain a permit or tentative approval to erect or alter a structure, and to define the authority of the Administrator of the Kentucky Airport Zoning Commission to reject or approve applications for permits and provide for the rules of practice for the processing of an application for a permit.

Section 1. (1) Every person who is required by the regulations of this commission to obtain a permit to construct or alter a structure shall send two (2) executed copies of the Form TD 56-50, Application for Permit to Alter or Construct a Structure, to the Administrator of the Kentucky Airport Zoning Commission, Office of Aeronautics, Frankfort, Kentucky 40622.
(2) The application must be submitted at least thirty (30) days prior to the date the proposed construction or alteration is to begin.

Section 2. (1) Upon receipt of the application, the administrator shall review the application to determine whether all information that is required has been submitted.
(2) If the application is incomplete, the administrator shall reject the application and return the application to the person submitting the application along with a statement of the information that is required by the commission for a complete application.

Section 3. (1) If the application is complete, then the administrator shall conduct an aeronautical study for the purpose of determining whether to recommend to the commission that a permit be issued.
(2)(a) The administrator may approve an application for a permit to alter or construct a structure when he has determined that the structure would be shielded by existing structures of a permanent and substantial character, or by natural terrain or topographic features of equal or greater height and would be located in a congested area of a city or an unincorporated area where it is evident [beyond a reasonable doubt] that the proposed structure so shielded will not adversely affect the safety of air navigation.
(b) In instances where time is of the essence with respect to the issuance of a permit the preliminary recommendation of the administrator for approval or disapproval may be furnished to the applicant. However, the commencement of any construction or erection of the structure prior to final consideration by the commission and the issuance of a permit shall be at the sole risk of the appicant. The commission, its members and its administrator shall not be responsible or liable in any manner for any work performed prior to the issuance of a permit.
(c) The administrator may approve an application for a temporary structure that will be in existence for such a short duration that it will no longer occupy the same airspace at the time a formal application can be considered by the commission. Such approval may be granted only if it is evident that the proposed temporary structure will not adversely affect the safety of air navigation.
(d) In instances where time is of the essence the commission may grant tentative approval of an application even though the time for filing objections to the application has not expired. Such tentative approval may be granted when it appears to the commission that the proposed structure will not adversely affect the safety of air navigation, and, if no objections were to be received, a permit would be issued by the commission. However, the commencement of any construction or erection of the proposed structure prior to the final consideration by the commission and the issuance of a permit shall be at the sole risk of the applicant. The commission, its members and its administrator shall not be responsible or liable in any manner for any work performed prior to the issuance of a permit.
(e) In any instance where approval for a temporary structure or tentative approval of a permanent structure is being sought, the

applicant shall furnish to the administrator affidavits or sworn statements detailing the conditions and reasons needed for the extraordinary measures being requested or provide any other information requested by the commission or its administrator.

(f) The commission reserves the right to reject any recommendation of the administrator or withdraw any tentative approval previously granted after final consideration of the application. Any reliance placed upon any recommendation of the administrator or any tentative approval shall be at the applicant's own risk.

(3) Otherwise, the administrator shall submit the application along with his recommendation for approval or disapproval to the commission at its next meeting.

(4) Prior to the submission of the application to the commission, the administrator shall circulate a copy of the application and the conclusions of his aeronautical study to any interested parties including, but not limited to, local airport boards, municipal and county governments' officials, airport owners and operators.

(5) Any interested parties shall be permitted to file with the commission written objections to the approval of the applications. Said objections shall be filed at least ten (10) days prior to the date of the meeting of the commission.

(6) The application normally will be considered at the next meeting of the commission and a copy of the commission's decision shall be mailed to the applicant and other interested parties.

C. LESLIE DAWSON, Secretary
STEPHEN REEDER, Chairman
APPROVED BY AGENCY: July 15, 1986
FILED WITH LRC: July 15, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public comment hearing on this proposed amended administrative regulation will be held August 26, 1986 at 8:30 a.m. in the fourth floor hearing room of the State Office Building, corner of High and Clinton Streets, Frankfort, Kentucky. Persons who intend to attend this hearing must in writing no later than August 21, 1986 so notify: Sandra Pullen, Assistant to the Secretary, Office of the Secretary, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Martin
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Tiering not applicable for regulation change.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 1:005. Textbook program plan.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190
PURSUANT TO: KRS 156.410, 156.437, 156.447, 156.474, 156.476, 157.100, 157.110, 157.120, 157.130, 157.140, 157.150, 157.160
NECESSITY AND FUNCTION: KRS 156.400 to 156.476 sets up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth. KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. This regulation establishes the standards and procedures which are necessary to carry out such statutory requirements dealing with textbooks.

Section 1. The subjects included in the "Program of Studies for Kentucky Schools" shall be arranged into six (6) groups as follows: Group I--Social Studies K-12; Group II--Language Arts K-12 (except Reading K-8 and Literature K-12); Group III--Science K-12; Group IV--Mathematics K-12; Group V--Reading K-8, Music K-12, Industrial Arts 7-12, Business Education 7-12, (except Introduction to Computers 9-11, Data Processing I 11-12, Data Processing II 12, Word Processing I 11-12, and Word Processing II 12), Vocational Education 7-12, (except Air Conditioning 10-12, Auto Body Repair 10-12, Auto Mechanics 10-12, Electricity 10-12, Electronics 10-12, Machine Shop 10-12, and Radio/TV Repair 10-12), and Trades and Industry 11-12; and Group VI--Literature K-12, Art Education K-12, Foreign Language 3-12, Driver Education 9-12, and Health and Physical Education K-12.

Section 2. (1) The Division of Textbook Services shall requisition and publishers submitting bids shall ship adequate textbook samples to the Division of Textbook Services and individual State Textbook Commission members, reviewers, and curriculum committees during the selection and adoption process. All available textbook samples, program descriptions, list of

gratis items for districts adopting or purchasing books, and other pertinent bid information shall be provided before the bid opening. Samples and information not available at bid opening shall be shipped to the Division of Textbook Services, commission members, reviewers and curriculum committees as soon as possible and not later than the date of the commission hearing held under Section 3 of this regulation.

(2) When the selection process has been completed and the individual commission members, reviewers and curriculum committees have no further need for samples in their possession, such shall be disposed of in the following manner:

(a) Reclaimed by publishers;

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies; or

(c) Sold by the State Board of Education. All sales and transfers shall be properly receipted and filed in the Division of Textbook Services. Official adoption samples, however, must be disposed of in accordance with KRS 156.470.

Section 3. (1) Each adoption year before the September listing, the State Textbook Commission shall conduct a hearing for the purpose of interviewing publisher agents and representatives and providing an opportunity for agents and representatives to make presentations on textbooks submitted for listing.

(2) The commission shall hear any person or organization that may have complaints or concerns about a textbook being considered for listing at the publisher hearing or the September listing.

(3) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a request two (2) weeks prior to either meeting to assure a place on the agenda. The request need not be in any prescribed form but must clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author and copyright date of the textbook in question;

(c) Sections of the textbook being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook is placed in use; and

(e) Suggested alternatives.

(4) A reasonable amount of time shall be assigned to the agenda for the hearing and one (1) spokesperson shall represent a group or organization.

(5) The commission's position and/or action shall be forwarded to the concerned parties after the September listing has been concluded.

Section 4. (1) The Kentucky State Textbook Commission has the right to inquire into and ascertain if any publisher has violated this regulation or the Kentucky Revised Statutes; or if the publisher has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include, but not necessarily be limited to, unsolicited contact by agents and representatives of individual publishers with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members and local district selection committee members meals, gifts, trips, or entertainment to assure the listing, adoption, and purchase of their textbooks. If there is sufficient evidence that publishers are guilty of any of the aforementioned, they shall be called before the State Textbook Commission to determine if violations did occur and what course of action should be taken.

(2) Publishers proposing to give local districts free-of-charge items, including but not limited to kits, duplicating masters, workbooks, and extra textbooks, if said district would adopt and purchase their textbooks, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, publishers may sample gratis items to local districts for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a publisher's textbooks.

(4) The State Textbook Commission shall have the right to refuse to execute or to cancel a publisher contract upon discovery that said publisher has violated any part of this regulation or does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook contracts shall file with the Division of Textbook Services the name of a Kentucky person, firm, or corporation upon whom process may be served. The name of the process agent, together with such other information concerning said agent, shall be made available to the proper authorities for the purpose of serving process.

Section 5. Publishers and local school districts may agree to pilot new textbook programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The Superintendent of Public Instruction shall approve all piloting programs. The local school district superintendent shall file the request for approval with the Superintendent of Public Instruction. The request need not be in any prescribed form but shall clearly state:

(1) The publisher that will conduct the pilot;

(2) The purpose of the pilot;

(3) The subject and grade levels in which the pilot will be conducted;

(4) The schools where the pilot will be conducted;

(5) The name of the school district staff member supervising the pilot;

(6) Beginning and ending date of pilot;

(7) Brief summary of evaluation procedures.

Section 6. Any school administrator or teacher that receives directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks shall be subject to the penalties of KRS 156.480.

Section 7. (1) The "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturers' Institute, as revised February, 1982, shall apply to all textbooks submitted for adoption in Kentucky. Said edition

is incorporated by reference and is on file in and can be obtained from the Division of Textbook Services.

(2) Publishers who have filed an old copyright with the official bid on or before July 15 may substitute the revised edition at the commission hearing. Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission on or before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 8. Defective binding, workmanship or material shall be reported as soon as detected. Publishers shall be held responsible for all defective textbooks. Textbooks that show manufacturing defects in the first or second year of use shall be replaced by the publisher on a one-for-one basis. After the first two (2) years of use, replacement agreement must be reached with the publishers. School districts shall start the replacement process as soon as it has been determined that textbooks are defective.

Section 9. (1) Request to substitute revised editions of textbooks under contract shall be considered at the regular meetings of the State Textbook Commission to be held on or before May 1 and on or before September 20.

(2) Substitutions shall not be permitted for textbooks to be used the last year of a contract.

(3) The publisher shall agree to supply either the listed or the substituted textbook in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the book is bid and sold elsewhere in the United States at the date of the substitution approval and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Publishers shall provide thirty (30) days prior to date of the commission meeting a sample textbook and a summary description of the revised edition that compares it with the textbook and/or program presently on the State Multiple List.

Section 10. (1) Multi-volume textbook programs for a single subject or a series for more than one (1) grade level is defined as two (2) or more books initially planned, written, designed, bound, sequential and identifiable as one (1) program.

(2) A district may implement curriculum programs in grades kindergarten through twelve (12) through the purchase of adopted textbooks from one (1), two (2), or three (3) textbook programs for grades kindergarten through eight (8) and up to ten (10) programs for grades nine (9) through twelve (12).

(3) A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8).

Section 11. (1) The wholesale and exchange prices in Kentucky shall not exceed the lowest wholesale and exchange prices at which textbooks are to be bid and sold elsewhere in the United States for the same adoption period. If reductions in prices are made elsewhere in the United States on the same textbooks being sold in Kentucky, publishers shall lower the price in Kentucky.

(2) The retail price to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

(3) The publisher contract shall state that upon settlement, the lowest exchange price, except on consumable textbooks, is the price to be paid for textbooks by the state to publishers who during the term of the contract give in exchange an old textbook of corresponding kind and grade, and may be of a different series to that provided for in the contract.

Section 12. (1) Local school districts are hereby authorized, for elementary school use, to use up to thirty (30) percent of the elementary school textbook funds for the optional purchase of supplementary textbooks, print and non-print media materials and audio-visual equipment other than those selected by the State Textbook Commission. Optional textbook funds may be used to purchase basal textbooks or instructional materials to be used in lieu of a basal textbook for the following:

(a) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" for which textbooks are not listed on the State Multiple List;

(b) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" that have organizational patterns and teaching methodology that require a variety of instructional materials;

(c) Kindergarten programs;

(d) Special education classes; and

(e) Courses and programs requiring State Board of Education annual approval.

Basal programs for the aforementioned courses and basal textbooks for all other subjects in the State Board of Education approved "Program of Studies for Kentucky Schools, Grades K-12" shall be purchased before optional textbook funds are used to purchase supplementary materials.

(2) The following materials are eligible to be purchased with optional textbook funds:

(a) Pre-printed organized materials including reference books, pamphlets, magazines, weekly readers, workbooks, worktexts, textbooks not on the State Multiple List, kits, master units, programmed instructional materials, and similar qualifying materials.

(b) Pre-processed organized audio-visual materials including films, film loops, tapes, slides, filmstrips, recordings, graphic materials, transparencies, globes, maps, charts, art objects, and similar qualifying materials.

(c) Pre-printed or pre-processed programs including kits and materials being used in lieu of textbooks for particular curriculum areas.

(d) Minor audio-visual equipment needed to utilize the audio-visual materials being purchased with optional funds.

(3) The following materials are not eligible to be purchased with optional funds:

(a) Rebinding, equipment other than minor audio-visual, furniture, personnel services,

teachers' guides and manuals, testing programs, library books, supplies and materials consumed in initial use and raw and/or blank materials.

(b) Major audio-visual installations such as public address systems, sound laboratories for language, computers, and televisions (including receiving sets and related equipment).

(4) School districts with special instructional material needs may exceed the designated optional portion of their textbook funds by making written application to the Division of Textbook Services. Annual approval must be obtained before funds are obligated if there is a need to exceed the designated thirty (30) percent option. The application signed by the district superintendent shall include a detailed description stating name of the program or course, rationale for the program, and percent of funds requested.

(5) After acquisition of eligible supplementary textbooks, materials, and equipment and payment of invoices, a request for reimbursement shall be submitted to the Division of Textbook Services on Form FT-21 before March 1. All claims submitted for the purchase of instructional materials for enrichment programs and programs not listed in the "Program of Studies for Kentucky Schools, Grades K-12" must include a copy of the State Board of Education approval of the program and instructional materials to be used.

(6) Regulations relating to the purchase of media materials, audio-visual equipment and all other instructional materials and supplies by local school districts shall contain the following requirements:

(a) Items to be purchased should be identified as consumable or non-consumable;

(b) Each local school district shall establish a per pupil allocation of funds to purchase equipment, materials and supplies, and of this allocation a portion shall be for consumable items and the remainder for non-consumable items;

(c) Local school districts may use all or a portion of student fees as part of the per pupil allocation of funds to purchase instructional equipment, materials and supplies;

(d) Each local school district shall survey teachers to determine their needs for instructional equipment, materials, and supplies. The local district board of education shall take into consideration the survey of teacher needs in the purchase of instructional equipment, materials, and supplies; and

(e) A financial report on allocations to and expenditures for instructional equipment, materials and supplies shall be prepared annually by the school district and shall be a public record.

Section 13. (1) The school districts shall make textbook adoptions for all the subjects in the six (6) adoption groups. The number of adopted textbooks, however, shall not exceed three (3) textbooks and/or programs per subject in any one (1) grade in grades kindergarten through eight (8) and ten (10) textbooks and/or programs per subject in any one (1) grade in grades nine (9) through twelve (12).

(2) School districts shall indicate their tentative first,
second and third choices in grades kindergarten through twelve (12). A summary of the choices shall be provided to the publisher for inventory purposes and shall in no way restrict purchases to any particular choice.

(3) Districts may purchase any or all adopted textbooks and/or programs in any number and combination based on identified pupil needs rather than grade level assignment.

Section 14. (1) Pupils in grades kindergarten through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction.

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made on forms supplied to local school districts by the Bureau of Education for Exceptional Children, Department of Education.

(3) Request for large print textbooks and material shall be directed to the Division of Materials and Curriculum.

(4) The local board of education shall assume responsibility for the care of textbooks and return them to the Resource Bank Distribution Center when no longer needed.

(5) Large print textbooks and materials purchased by the Division of Textbooks Services are not charged to the textbook account of the local school district.

Section 15. (1) The Division of Textbook Services shall prepare textbook budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing full basal textbook programs during the first year of each adoption and/or funding. After basal textbook needs have been met, surplus funds may be used to purchase supplementary materials.

(2) When allocating funds for the purchase of textbooks, the Division of Textbook Services shall use the pupil membership at the close of the first month of the current school year.

(3) A statement of elementary school funds allocated to each school district shall be mailed to the superintendent after March 1. The statement shall reflect the balances from the previous year, allotment for the ensuing year, sales and fines for the past year, and growth adjustments providing funds to purchase books for new pupils.

(4) School districts shall utilize their textbook allocation by March 1 of the year for which the funds were allocated.

Section 16. (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12) by renting to pupils all currently adopted, state-provided textbooks purchased prior to July 1, 1984, and purchasing and renting textbooks from each scheduled incoming adoption group beginning in 1984 with Adoption Group IV (Mathematics). This does not prohibit local districts from using local funds to provide a free textbook program.

(2) Local school districts not providing a

free textbook program for grades nine (9) through twelve (12) [The Superintendent of Public Instruction, subject to the approval of the State Board of Education,] shall establish annually a [maximum] textbook rental fee based on the cost of the adoption group scheduled for purchase and the cost of replenishments. [Beginning with the 1984-85 school year,] The maximum rental fee shall be based on four (4) dollars per two (2) semester course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed two (2) dollars per two (2) semester course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) The school district shall requisition textbooks from the State Multiple List for the grades nine (9) through twelve (12) rental program from the Division of Textbook Services. The Division of Textbook Services shall process the requisitions to the different publishers. The textbooks are to be shipped to the local school districts. Publishers shall invoice the local school districts.

(4) Local school districts shall establish and maintain one (1) centralized textbook rental program account subject to audit. All textbook rental monies shall be receipted to pupils and rental monies, requisitions, and payments to publishers shall be processed through the centralized account.

(5) School districts shall purchase a complete basal textbook program for grades nine (9) through twelve (12) the first year of each scheduled adoption for each subject in the adoption group for which basal textbooks are appropriate.

(6) The Division of Textbook Services shall provide local districts with requisition forms, an annual inventory report, and the information necessary for districts to maintain an efficient textbook rental program for grades nine (9) through twelve (12).

(7) All textbook statutes and regulations governing the textbook program for elementary and secondary schools not invalidated by the textbook rental program statutes and regulations shall be applicable to the textbook rental program for grades nine (9) through twelve (12).

Section 17. (1) The Division of Textbook Services shall provide Annual Report and requisition forms to all school districts. These forms shall be prepared in duplicate. The original copy shall be sent to the Division of Textbook Services and the second copy retained by the district. The Annual Report (FT-8) and requisition (FT-9) may be filed after March 1 and shall be filed by June 30.

(2) The Division of Textbook Services, upon receipt and approval of a requisition for textbooks from any school district, shall issue a local purchase order. A copy of the local purchase order shall be sent to the publisher, two (2) copies sent to the local district and two (2) copies retained by the Division of Textbook Services.

(3) All adopted textbooks purchased with state textbook funds shall be purchased through the office of the Division of Textbook Services.

(4) Publishers shall ship direct to local school districts by prepaid freight or United Parcel Service and issue invoices in triplicate to the Division of Textbook Services.

(5) Upon receipt of textbooks, the school district shall check items of shipment against the local purchase order (receiving report) and if all textbooks were received in satisfactory condition, certify this fact by mailing one (1) copy of the local purchase order (receiving report), dated and signed to the Division of Textbook Services. The Division of Textbook Services may then order payment.

(6) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label is affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." School districts shall record the purchase date and the issue date on the uniform label.

(7) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed is classified as a used textbook.

(8) A complete record shall be kept by the school district for all state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) delivered to teachers or principals of the different schools. Form FT-5 or a comparable form shall be used. Form FT-5 will be furnished upon request in quantities equal to number of teachers or principals.

(9) When textbooks are issued, a requisition card shall be filled out in duplicate for each pupil. Form FT-6 or a comparable form shall be used. Form FT-6 will be furnished upon request in quantities equal to pupil membership.

Section 18. The Division of Textbook Services shall encourage and facilitate the transfer of surplus textbooks that may be in local school districts' textbook depositories. The Division of Textbook Services shall, at appropriate times during a school year, solicit from the districts a list of surplus textbooks and mail to all districts a master list of available textbooks. Districts that need textbooks on the master list will request the Division of Textbook Services to initiate a transfer. The district having possession of the surplus textbooks requested by a district shall ship the books and notify the Division of Textbook Services the number of books shipped and cost of transportation. Upon receipt of the books, the receiving district will notify the Division of Textbook Services. The Division of Textbook Services shall inter-account funds by transferring the cost of the textbooks and transportation cost from the receiving district to the shipping district's textbook account. The cost to the receiving district of all transferred textbooks shall be fifty (50) percent of the wholesale price plus transportation.

Section 19. Pupils or parents shall compensate school districts for textbooks lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks; and twenty-five (25) percent of

retail cost for five (5) and six (6) year old textbooks.

Section 20. (1) Textbooks to be rebound shall not qualify for publisher replacement under Section 8 hereof. Textbooks with five (5) or more years of use shall be rebound only in extreme cases of shortages and emergencies.

(2) Textbooks in need of rebinding shall be reported on Form FT-16 to the Division of Textbook Services with the Annual Report. After approval, the request is forwarded to the bindery under contract with the Commonwealth of Kentucky. The bindery shall pick up books or instruct the districts to ship the books collect. Rebound books shall be returned to the school district by the bindery with shipping charges prepaid. The bindery shall mail the invoice to the Division of Textbook Services for payment. Such payments shall not be charged to the textbook account of local school districts.

Section 21. (1) District superintendents shall make an accurate count of all state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) under adoption that are suitable for classroom instruction and report same on the Annual Report (FT-8).

(2) The Division of Textbook Services shall file an annual exchange report with publishers identifying the titles and number of textbooks purchased to replace textbooks no longer suitable for classroom instruction. A claim requesting credit memorandums in the amount of the difference between the wholesale and exchange price for each textbook purchased shall be filed with publishers. The credit memorandums shall be used in payment of invoices for textbooks purchased from said publishers during the next purchase year. Publishers shall relinquish their claim for exchange textbooks if not claimed within a reasonable period of time after replacement.

(3) The local superintendent shall assume responsibility for the disposal of unclaimed textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the unclaimed textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities.

(b) Make the unclaimed textbooks available to pupils within the district.

(c) Publicize in the local newspaper that unclaimed textbooks are available to individual residents of the local district. Unclaimed textbooks disposed of in this manner shall not be made available to used textbook dealers.

(d) Make the unclaimed textbooks available to civic organizations for the purpose of distribution to undeveloped countries.

(e) Make the unclaimed textbooks available to recycling operations.

(f) Destroy unclaimed textbooks in any manner that is practical and in the best interest of the state and local school district. Any funds from the sale of unclaimed textbooks shall be paid into the state treasury.

Section 22. (1) Beginning with the 1986-87 school year, local school districts shall make available free textbooks to indigent children in grades nine (9) through twelve (12), using the guidelines for the free and reduced price lunch program. The parents of indigent students may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that they contribute financially toward the cost of their children's school lunches. The process of implementation shall be the prerogative of the local school district which shall keep adequate records for documentation and compliance purposes.

(2) In exceptional circumstances, at the discretion of a local school district, pupils who do not meet free and reduced price lunch guidelines may be provided free textbooks.

(3) Local school districts shall adopt procedures and policies whereby pupils are informed of the availability of, and guildelines and procedures for obtaining, free textbooks for pupils unable to rent or purchase them.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Crichton Comer
(1) Type and number of entities affected: 178
(a) Direct and indirect costs or savings to those affected: Up to $15,000 additional costs.
1. First year: $15,000 (est.)
2. Continuing costs or savings: $15,000 (est.) per year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Guidelines for free and reduced price lunches.
(b) Reporting and paperwork requirements: Locally devised policies and procedures kept for documentation and compliance purposes.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Checking documentation as part of accreditation compliance procedure.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 1. Break-in period was considered. 2. Allowing districts to offer books if asked was considered. On advice of State Department of Education attorney, both approaches were rejected.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in

conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 1:010. Facilities surveys and plans.

RELATES TO: KRS 157.420, 157.622
PURSUANT TO: KRS 156.070
NECESSITY AND FUNCTION: KRS 157.420(3) requires that the capital outlay portion of Foundation Program funds be used by school districts for capital outlay projects approved by the Superintendent of Public Instruction in accordance with requirements of law and based on a survey made in accordance with regulations of the State Board of Education; and KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. This regulation provides for the development and adoption of a written plan describing construction and use of school facilities to guide school administrators in meeting the needs of the district.

Section 1. The Superintendent of Public Instruction shall conduct or cause to be conducted a facilities survey of each school district as a part of the periodic accreditation process [at least every five (5) years], and shall deliver to the local board of education the state board-approved [a] report which contains an assessment of existing conditions and a [recommended] facilities plan which designates an organizational pattern, classification of school centers, and a priority schedule for construction and renovation needs. This survey shall be done in conjunction with the accreditation program except for requested and justified amendments [as provided in Section 4 of this regulation, and shall be subject to the public hearing procedures required therefor by 704 KAR 10:022].

Section 2. Each school district's facilities plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "School Facilities Construction Criteria, July, 1986," which is hereby adopted and incorporated by reference. Copies of said document can be obtained from the Division of Buildings and Grounds, Department of Education. [A facilities survey report upon adoption by the local board of education and the State Board of Education shall become the facilities plan for the district unless an appeal, in lieu of adoption by the local board, is submitted to the Superintendent of Public Instruction in accordance with the accreditation process appeal provisions set forth in 704 KAR 10:022. Each appeal shall include a proposed full facilities plan with the local board's requested priority listing of construction needs.]

Section 3. The facilities plan shall remain in effect until any changes have been approved by the State Board of Education.

[Section 4. A local board of education may at any time request the Superintendent of Public Instruction to conduct a review of a facilities plan for the district. Upon the presentation of written evidence that circumstances exist which necessitate temporary or permanent suspension or alteration of the adopted plan, the State Board of Education shall, at its next regular meeting, schedule a public hearing and designate a hearing officer to conduct the public hearing. The Superintendent of Public Instruction shall present at the public hearing such data as is appropriate to provide the hearing officer objective information upon which to make a recommendation. Members of the local school board, the general public, and interested individuals and parties shall be provided an opportunity to testify at the hearing. The hearing officer, whenever practicable, shall present his or her report at the next regularly scheduled meeting of the State Board of Education after the public hearing, at which time the State Board of Education shall make a final decision relative to the requested facility plan amendment. The Superintendent of Public Instruction shall make a recommendation to the State Board of Education relative to the requested revision of the facility plan at the time the hearing officer makes his or her report.]

Section 4. [5.] The adopted facilities plan shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district will permit as determined by the Superintendent of Public Instruction or the School Facilities Construction Commission. The scope of any construction project recommended in the facilities plan shall not be changed unless the plan is amended.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Alice McDonald, Rebecca Brown, Anne Thompson, Gary Bale
(1) Type and number of entities affected: Kentucky Department of Education and 180 school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: 0

2. Continuing costs or savings: 0
3. Additional factors increasing or decreasing costs (note any effects upon competition): 0
(b) Reporting and paperwork requirements: Implements new statute enacted in 1985.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: 0
2. Continuing costs or savings: 0
3. Additional factors increasing or decreasing costs: 0
(b) Reporting and paperwork requirements: Implements new statute enacted in 1985.
(3) Assessment of anticipated effect on state and local revenues: No effect on revenues but implementation of improved long-term planning methods should increase benefits obtained from school building funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Will achieve uniformity in planning process and assessment of needs for school building construction.

Tiering:
Was tiering applied? No.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 1:025. Extended employment.

RELATES TO: KRS 157.390
PURSUANT TO: KRS 156.070
NECESSITY AND FUNCTION: KRS 157.390 provides that the amount to be paid through the Minimum Foundation Program for teachers' salaries for certain units be increased proportionately if the personnel for such units are employed for longer than the regular school term and such employment is approved by the Superintendent of Public Instruction under regulations of the State Board of Education. This regulation implements that function by providing for approved employment beyond the regular school term for funding purposes under the Minimum Foundation Program, for personnel staffing the statutorily permissible units for administrative and special instructional services, supervisors of instruction, directors of pupil personnel, vocational education and superintendents.

Section 1. School districts to be alloted teachers salaries for more than 185 days by the Minimum Foundation Program in accordance with KRS 157.390(2)(a) for those foundation program units alloted under the provisions of KRS 157.360 shall be allotted days of extended employment based on the categories of employment and positions enumerated in Sections 4 and 9 of this regulation. Days allotted shall be limited to the lesser of:

(1) The number of days of employment in the position beyond 185 days;
(2) The maximum number of days beyond the 185 day term approved by the Superintendent of Public Instruction in the plan submitted by the local district board of education; or
(3) The number of days calculated under Section 8 of this regulation.

Section 2. The board of education of each local school district shall, on or before March 15, on forms provided by the State Department of Education, submit a plan for the use of extended employment for each category of extended employment which may include, but not be limited to, program objectives to be achieved, calendars showing the days worked beyond the 185 day school term, and the execution of such reporting instruments as are necessary to appraise the efficiency of the extended employment program.

Section 3. Upon the completion of the final Foundation Program calculation each year the Superintendent of Public Instruction shall advise the local districts of the estimated number of days of extended employment funded in the Foundation Program appropriation for the subsequent school year which will be available to the local school district for the categories of employment specified in Sections 4 and 9 of this regulation as calculated in Sections 6, 7, 8 and 9 of this regulation.

Section 4. For the purposes of allotting extended employment in accordance with Sections 6 and 7 of this regulation, eligible positions, including such positions staffed on a part-time basis with properly certified personnel performing eligible extended employment duties, will be categorized as follows:
(1) Central Based Administration:
(a) Assistant Superintendent;
(b) Finance Officer;
(c) School Business Administrator;
(d) District Director of Vocational Education; and
(e) Director, Coordinator, or Manager of district-wide services as coded on the Professional Staff Data Form, including, but not limited to, Director of School Food Service and Director of Special Education.
(2) Central Based Supervision of Instruction and Student Activities:
(a) Supervisor of Instruction; and
(b) Director of Pupil Personnel.
(3) School Based Administration and Supervision:
(a) Principal;
(b) Assistant Principal; and
(c) Vocational School Director.
(4) Librarian.
(5) Guidance Counselor.
(6) District-Employed Vocational Teacher:
(a) Agri-Business;
(b) Business and Office;
(c) Marketing and Distributive Education;
(d) Health and Personal Services;
(e) Home Economics;
(f) Public Service;
(g) Special Vocational Programs; and
(h) Industrial/Technology Education Levels I, II, and III.

Section 5. The days of extended employment calculated in accordance with Sections 6, 7 and

8 of this regulation to the categories of extended employment as specified in Section 4 of this regulation may be transferred to meet program priorities in the following manner:

(1) The days of extended employment in Section 4(1) of this regulation may be transferred to Section 4(2) of this regulation.

(2) The days of extended employment in Section 4(2) of this regulation may be transferred to Section 4(3) of this regulation.

(3) The days of extended employment in Section 4(1), (2) and (3) of this regulation may be transferred to Section 4(4), (5) and (6) of this regulation.

(4) The days of extended employment in Section 4(4), (5) and (6) of this regulation may be transferred among those subsections.

Each school district with an existing approved vocational agriculture program shall employ each of its vocational agriculture [maintain the equivalent of at least one (1) full-time] teachers [of agriculture] for fifty-five (55) days extended employment. Such extended employment shall be for the purposes set forth in KRS 157.360(9)(b) and in accordance with an approved plan for summer program developed pursuant to KRS 157.360(9)(c) [for supervision of students for work experience and other related functions].

Section 6. The days calculated for each category enumerated in Section 4(1) through (5) of this regulation for each school district shall be the state total days allotted for the prior year in each such category divided by the sum of the state total units allotted for the prior year for basic, exceptional children, district-employed vocational, plus kindergarten times the sum of the units allotted the prior year in each district for basic, exceptional children, district-employed vocational plus kindergarten.

Section 7. The days calculated for the category enumerated in Section 4(6) of this regulation shall be the state total days allotted for the prior year district-employed vocational units divided by the state total units allotted for the prior year for the types of district-employed vocational units approved for the Section 4(6) of this regulation category times the units allotted the prior year in each district for the types of district-employed vocational units approved for such category.

Section 8. Days calculated for extended employment for each category of extended employment for each school district shall be adjusted proportionately each year to a level not to exceed the appropriation contained in the biennial budget, after units allotted in Section 9 of this regulation are deducted from the appropriation.

Section 9. In addition to the extended employment allotted to the categories of employment specified in Section 4 of this regulation, each school district will be allotted fifty-five (55) days of extended employment for the superintendent of that district and each contract vocational education teacher employed in a state operated school may be allotted up to twenty (20) days of extended employment provided a work program for that position has been approved by the Superintendent of Public Instruction.

Section 10. This regulation shall be effective for the 1984-85 school year and any preparatory steps in anticipation thereof enumerated herein, and school years thereafter.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wilburn Pratt, Ron Moubray
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings: Allow local district to make use of available funding. No new cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings: N/A. Funding currently provided.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 4:080. Temporary or supplemental units.

RELATES TO: KRS 162.060, 162.160
PURSUANT TO: KRS 156.160(5)
NECESSITY AND FUNCTION: To provide for

emergency classrooms and temporary instructional units.

Section 1. Relocatable classrooms which can be moved and assembled into instructional units on the school site may be approved on a year to year basis subject to the following:

(1) The minimum floor area of a relocatable classroom shall be as required in permanent school building construction except that temporary units less than twenty-two (22) feet wide may be approved for use when new construction is planned to eliminate the use of such units within a two (2) year period of time. Approval would allow the units to remain on the site for no more than twenty-four (24) months. Such approval shall be granted only after an on-site visit by a Department of Education employee to determine the adequacy of the site.

(2) The minimum heating, artificial lighting and ventilation shall be the same as for permanent construction.

(3) The minimum ceiling height shall be seven (7) feet and ten (10) inches at the lowest point.

(4) The minimum floor load shall be fifty (50) pounds per square foot live load.

(5) All units shall be securely anchored to withstand a wind of seventy-five (75) miles per hour.

(6) Steps with landings and handrails shall be provided for all exit doors. A ramp serving at least one (1) entry shall be provided.

(7) Each classroom shall be provided with two (2) doors, remote from each other.

(8) Chalkboard and tackboard, a minimum of forty-eight (48) square feet of each, shall be provided.

Section 2. The plans and specifications for approval shall provide the following:

(1) A plot plan of existing school which shows all boundaries, buildings, walks, drives, and other developments and the proposed location of the unit. Electrical service lines to the units, and water and sewage lines where applicable shall be shown on the plot plan.

(2) Specifications that each bidder will furnish a unit that will meet all of the regulations of the State Board of Education, and applicable regulations of the Department of Housing, Buildings and Construction. The specifications shall also require each bidder to submit with the bid, a copy of the plans and specifications bearing the seal of a Kentucky registered architect, of the unit being bid. The specifications shall require the successful bidder to submit a copy of the plans, bearing the seal of a Kentucky registered architect or engineer, to the Department of Housing, Buildings and Construction and Department of Education.

Section 3. (1) The successful contractor shall furnish the local board of education certification of completion on forms provided by the State Board of Education. The local board of education shall approve the form and forward to the Superintendent of Public Instruction a completed copy or a letter stating why the board does not agree that the construction is substantially completed. The Superintendent of Public Instruction shall make a final inspection of the project following receipt of the required State Board of Education form.

(2) Following the final inspection, a written statement of completion or a list of items to be completed, will be given to the local board of education with a copy to the contractor. Written authorization for full payment of the contract will be given when the project is completed in accord with the plans and specifications.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Judge
(1) Type and number of entities affected: All districts utilizing temporary classrooms.
(a) Direct and indirect costs or savings to those affected: Should be a slight cost savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were too rigid.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(Proposed Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540
PURSUANT TO: KRS 156.070, 156.160, 189.540
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt

regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the State Board to adopt regulations to govern the design and operation of school buses. This regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. All local boards of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and such events related to such schools. The medical examination shall include tests for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent.

Section 2. No person shall drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, etc., due to injury or disease that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. Any driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) No person shall drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellen) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees;

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. No person shall drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear such properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. Drivers of school buses shall be between eighteen (18) and sixty-nine (69) years of age. A driver shall not start driving a school bus until his eighteenth birthday, but any driver turning seventy (70) years of age during the school term may be allowed to drive until the end of the semester in which said birthday occurs.

Section 7. The school bus driver shall have a current driver's license that is valid in Kentucky.

Section 8. Beginning with the 1985-86 school year, no person shall begin driving a school bus until he or she has completed the beginning school bus driver training course prescribed by the State Board of Education and has been issued a Kentucky school bus driver certificate by the Superintendent of Public Instruction, based upon evidence submitted by a certified instructor that all training requirements have been satisfied; provided that a temporary school bus driver's permit may be issued under the provisions set forth in 702 KAR 5:030. The prescribed training course for beginning drivers shall consist of the following instructional units and minimum instructional times:

(1) Laws and regulations - one (1) hour;
(2) Driving fundamentals - one (1) hour;
(3) Care and maintenance - one (1) hour;
(4) Critical situations - one (1) hour;
(5) Accidents and emergency procedures - one (1) hour;
(6) Pupil management - one (1) hour;
(7) First aid - one (1) hour; and
(8) Vehicle operations - one (1) hour.

Section 9. Beginning with the 1986-87 school year, no school bus driver shall continue to drive a school bus until he or she has completed the school bus driver training course prescribed by the State Board of Education and holds a Kentucky school bus driver certificate issued by the Superintendent of Public Instruction, based upon evidence submitted by a certified instructor that all training requirements have been satisfied. The prescribed training course for initial certification of experienced drivers shall consist of the instructional units and minimum times outlined in Section 8 of this regulation, plus the following instructional units and minimum instructional times:

(1) Special education transportation - five-tenths (.5) hour; and
(2) Extra curricular trips - five-tenths (.5) hour.

Section 10. Beginning with the 1987-88 school year, all school bus drivers shall be required to renew their certificates annually by satisfactorily completing eight (8) hours of in-service driver safety training conducted by a certified instructor and relevant to the curriculum established under the standards set forth in Sections 8 and 9 of this regulation.

Section 11. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 12. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set

the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 13. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 14. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 15. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 16. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 17. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless a written permit signed by the school principal or his designate is presented to the driver.

Section 18. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission of the district superintendent to do so.

Section 19. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks of any type to be transported.

Section 20. The driver shall not knowingly permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not knowingly permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 21. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 22. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 23. The driver shall activate the flashing stop warning lights and/or the stop signal arm a sufficient distance from a bus stop that would permit any prudent motorist to stop short of striking or passing the stopped bus.

Section 24. For safety reasons, the driver shall not permit gasoline to be put into the bus gasoline tank while pupils are on board the bus.

Section 25. If a pupil's conduct on the bus is such that it endangers the lives and morals of the other people on the bus and makes it unsafe for the bus to continue on its route, and when requested by the driver to desist from such conduct and the pupil does not comply, it shall be the duty of the driver to order the pupil to leave the bus, and if this order is refused, to eject the pupil from the bus or send for assistance, whichever the circumstances dictate. Ejecting a pupil from the bus shall be done only in the most extreme circumstances. When ejection from the bus is required, the driver shall notify the principal of the school where the pupil attends, the district superintendent or some other school authority of the action taken as soon as it is possible to do so.

Section 26. In the interest of safety, the driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The driver shall open the bus entrance door, listen, and look for the approach of a train from both directions. When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks. In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks. Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 27. The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 28. The driver shall make a pre-trip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 29. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on the sections of highways over which the bus travels, nor at any time in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe for the bus to travel at that speed.

Section 30. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 31. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 32. The driver shall not use tobacco products while operating the school bus, nor knowingly permit pupils to use tobacco products when on the school bus.

Section 33. The driver shall signal pupils who

must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wendell D. Bruce
(1) Type and number of entities affected: School districts that operate school buses.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. Need for uniformity in school districts in the interest of health and safety.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:005. Educational Improvement Act.

RELATES TO: KRS 158.650 to 158.740
PURSUANT TO: KRS 156.070, 158.650, 158.670, 158.700
NECESSITY AND FUNCTION: KRS 158.650 to 158.740, as amended by Senate Bill 202, the Educational Improvement Act, mandate a program of assessment, testing, annual performance reports, educational improvement plans and various sanctions to insure the right of public school students to acquire the competencies in the essential skills necessary to complete high school, pursue post secondary education, or enter the work force; and to assure such students access to programs and services appropriate to their educational needs in the areas of competencies in the essential skills, with the Department of Education to administer the act pursuant to regulations of the State Board of Education and to develop a comprehensive implementation plan. This regulation implements the duties and functions of the Educational Improvement Act of 1978, as amended by Senate Bill 202, by adopting the Department of Education's revised implementation plan.

Section 1. Each local district board of education shall prepare an Annual Performance Report which shall include local district data for the following factors: annual transportation cost per pupil transported; annual current expenses per pupil in average daily attendance; cost per pupil for instruction; cost per pupil for administration; percent of district revenue received from local, state and federal sources; local revenue per child in average daily attendance; assessed property value per child in average daily attendance; results of the state-mandated testing program; results of Scholastic Aptitude Test and American College Board Test; dropout rate; retention rate; percent average daily attendance; number and percent of students going to college or other post-secondary training; number and percent of students enrolled in special education and completing Individual Education Plans; percent of enrollment classified as economically deprived; percent attendance by professional staff; student/teacher ratio; teacher/administrator ratio; salary data by rank; the number of teachers teaching out of their field of specialty and the number of classes taught by teachers out of their field of specialty; expenditures for staff in-service; courses exceeding the state Program of Studies requirements; and an executive summary of the Master Educational Improvement Plan Progress Report. This report shall be submitted to the State Board of Education by December 15, 1984 for the 1983-84 school year, and by September 15 of each succeeding school year and shall be published in the newspaper with the largest circulation in the county by October 1.

Section 2. Each local district board of education shall identify program and service deficiencies and student achievement deficiencies based upon the Annual Performance Report, the results of the most current review of the factors listed hereinafter and such other state-mandated performance reports as deemed appropriate. Deficiencies shall be determined as follows:
(1) The local school district shall be deemed to have a deficiency [declared deficient] in program and service offerings when one (1) or more of the following accreditation standards are not met.
(a) STANDARD - Legal responsibility:
1. Indicator - The local school district is in

compliance with current applicable statutes of the Commonwealth of Kentucky and Kentucky administrative regulations and state board policies.

2. Indicator - The local school district is in compliance with current applicable federal laws and regulations.

(b) STANDARD - Curriculum and learning environment:

1. Indicator - Each school provides a minimum of 175 days of instruction.

2. Indicator - Each school provides a minimum of six (6) hours of instructional time per day.

3. Indicator - Each school is in compliance with the requirements in the Program of Studies in Kentucky Schools, K-12, pursuant to 704 KAR 3:304.

4. Indicator - Each school has a written plan for implementing the program of instruction for grades K-12.

5. Indicator - Opportunities are provided for citizens' groups to participate in the following:

a. Curriculum study;

b. Budget planning;

c. Co-operative evaluation; and

d. Accreditation study.

6. Indicator - The school has developed specific plans and procedures assuring accountability to the local board and to the public.

7. Indicator - Quality textbooks with current content and provided in adequate quantities to meet classroom needs.

8. Indicator - The school has sufficient materials and equipment available to implement the curriculum.

(c) STANDARD - School staff and administration:

1. Indicator - All professional personnel hold appropriate certificates for positions and/or assignments. (Each vocational staff member has the required work experience specific to the program being taught.)

2. Indicator - All teachers are teaching in their major or minor field or specific areas of concentration.

3. Indicator - The local district has established and implemented procedures for evaluating all certified personnel based on the quality of their performance.

(d) STANDARD - Responsible pupil conduct: Indicator - Pupils, parents, teachers, administrators, and school board members are involved in the development of a code of pupil conduct and attendance based on assessed needs which is approved by the local school board; which is in compliance with state and federal law; and which contains a system by which all pupils, parents, and faculty members are informed annually of the pupil code and its provisions.

(e) STANDARD - Financial support and budget: Indicator - The budget provides for adequate funding of all required accrediting standards.

(2) The local district shall be deemed to have a deficiency [declared deficient] in program and service offerings when one (1) or more of the following planning and reporting standards are not met;

(a) STANDARD - Master Educational Improvement Plan. Indicator - The local school district shall prepare and implement the Master Educational Improvement Plan established jointly by the district and the Kentucky Department of Education and approved by the local board of education.

(b) STANDARD - Annual Performance Report.

1. Indicator - The local district shall prepare and submit each year as herein required, the Annual Performance Report to the State Board of Education.

2. Indicator - The local district shall publish the Annual Performance Report in the newspaper with the largest circulation in the county by October 1.

(3) The local school district shall be deemed to have a deficiency [declared deficient] in academic achievement when one (1) or more of the following standards of attainment of competencies are not met: STANDARD - Student Academic Performance.

(a) Indicator - Students in grades 3, 5, 7, and 10 shall score at or above the national average of fifty (50) normal curve equivalency on the total battery of the Kentucky Essential Skills [Comprehensive] Test [of Basic Skills].

(b) Indicator - Local school districts shall achieve an academic performance level at which eighty-five (85) percent of the students enrolled in each grade shall master the essential skills in the skills areas of reading and mathematics in the 1984-85 school year and in the additional skills areas of spelling, writing and library research reference skills each year thereafter. Districts achieving a performance level at which the percent of students in each grade mastering the essential skills is more than five (5) percentage points below eighty-five (85) percent shall develop and implement plans at the local level to improve the performance level by two and five-tenths (2.5) percentage points each year. Local school districts achieving an academic performance level at which the percent of students in any grade mastering the essential skills is more than five (5) percentage points below eighty-five (85) percent in three (3) or more grade levels in any one (1) skills area, or that fail to demonstrate in two (2) consecutive years the previously required rate of improvement in a grade or skills area shall be deemed to have a deficiency in the applicable skills area and shall include in the Master Educational Improvement Plan a specific goal focused on improving the percent of students mastering the essential skills by at least two and five-tenths (2.5) percentage points each year. The goal shall include both process and product objectives which establish specific action, time frames, and outcomes that systematically move the district toward achieving an eighty-five (85) percent performance level in each grade and skills area.

(4) The local school district shall be deemed to have a deficiency [declared deficient] in product goals when one (1) or more of the following school district outcome standards are not met:

(a) STANDARD - Student Attendance.

1. Indicator - The percentage of attendance shall be calculated by dividing the aggregate days attendance by the aggregate days membership. Local school districts achieving a percent of attendance of more than ninety-three and five-tenths (93.5) but less than ninety-six (96) shall be deemed in a satisfactory range and shall develop and implement a plan at the local level which includes [in the Master Educational Improvement Plan] a specific goal focused on improving student attendance. The goal shall include both process and product objectives

which establish specific action, time frames, and outcomes that systematically move the district toward achieving ninety-six (96) percent or better student attendance.

Local school districts achieving less than ninety-three and five-tenths (93.5) percent attendance shall be deemed to have a deficiency [deficient] and shall include in the Master Educational Improvement Plan a specific goal focused on improving student attendance. The goal shall include both process and product objectives which establish specific actions, time frames, and outcome that systematically move the district toward achieving ninety-six (96) percent or better student attendance. In addition local school districts achieving less than ninety-three and five-tenths (93.5) percent attendance shall as a minimum achieve the following percentage improvements in attendance each year by range groupings in which they fall for that year:

Below ninety (90) percent - the difference between ninety (90) percent and the district's current percent of attendance;

Over ninety (90) percent but less than ninety-two (92) percent - two (2) percent;

Over ninety-two (92) percent but less than ninety-three and five-tenths percent - one (1) percent.

Any local school district failing to implement the Master Educational Improvement Plan shall be deemed deficient in accordance with subsection (2) of this section.

(b) STANDARD - Student Dropout.

1. Indicator - The dropout rate shall be defined as the annual percentages of students leaving school prior to graduation in grades 7-12 and include withdrawals in attendance accounting codes W6, [W7,] W10, and W11.

Local school districts with a dropout percentage of more than three and five-tenths (3.5) percent but less than five and five tenths (5.5) percent shall be deemed in a satisfactory range and shall develop and implement a plan at the local level which includes [in the Master Educational Implementation Plan] a specific goal focused on reducing the dropout rate. The goal shall include both process and product objectives which establish specific actions, time frames, and outcomes that systematically move the district toward reducing the dropout percentage to three and five-tenths (3.5) percent or less.

Local districts with a dropout percentage greater than five and five-tenths (5.5) percent shall be deemed to have a deficiency [deficient] and shall include in the Master Educational Improvement Plan a specific goal focused on reducing the dropout rate. The goal shall include both process and product objectives which establish specific actions, time frames, and outcomes that systematically move the district toward reducing the dropout percentage to three and five-tenths (3.5) percent or less. In addition, local districts with a dropout percent in excess of five and five-tenths (5.5) percent shall as a minimum achieve the following percentage improvements in reducing dropouts each year by the range groupings in which they fall for that year:

Over eight and five-tenths (8.5) percent - the difference between eight and five-tenths (8.5) percent and the district's current dropout percentage;

Less than eight and five-tenths (8.5) percent but more than seven (7) percent - one (1) percent;

Less than seven (7) percent but more than five and five-tenths (5.5) percent - .75 percent.

A local school district failing to implement the Master Educational Improvement Plan shall be deemed deficient in accordance with Section 2(2) of this regulation.

Section 3. (1) To correct deficiencies as defined by this regulation and meet other statutory requirements, each local board of education shall prepare and submit to the State Board of Education for approval, by October 15, 1985, a Master Educational Improvement Plan. The Master Educational Improvement Plan shall include as separate components the following: Part I, a plan for addressing accreditation deficiencies; Part II, a plan for addressing deficiencies in academic performance on state mandated tests; Part III, a plan for addressing the district personnel in-service needs (to be submitted by July 15 annually); Part IV, a plan for addressing the deficiencies identified as a result of the district's financial analysis; and Part V, such other components as necessary to correct deficiencies identified in other program and performance areas. The Master Educational Improvement Plan shall include specific time lines for correcting each deficiency and shall designate the individuals responsible for correcting each deficiency. The Master Educational Improvement Plan shall be established jointly by the district and the Kentucky Department of Education and shall be approved by the local board of education and the State Board of Education.

(2) Upon the initial filing and approval of a Master Educational Improvement Plan, the contents thereof shall supersede the separate component reports then on file.

Section 4. (1) Each district shall report to the Kentucky Department of Education by September 15 of each school year, its progress in correcting the deficiencies addressed in its Master Educational Improvement Plan. The Kentucky Department of Education shall identify those districts failing to make satisfactory progress in correcting deficiencies. The progress reports of the identified districts and such other reports as may be requested shall be reviewed by the Educational Improvement Advisory Committee which shall recommend to the Superintendent of Public Instruction for State Board action, those districts which are "educationally deficient" and which should be provided with technical assistance by the Kentucky Department of Education. Satisfactory progress shall be defined relative to "educationally deficient," as the district's compliance with and adherence to the time lines established in the approved Master Educational Improvement Plan which shall be submitted on an annual basis until the district is cleared of deficiencies.

(2) Where time lines established in a Master Educational Improvement Plan require remedial action by a district prior to the submission of a following year's progress report, the Superintendent of Public Instruction shall monitor such compliance and may recommend declarations of educational deficiency to the State Board of Education, where compliance is not accomplished, without recommendation or

consideration by the Educational Improvement Advisory Committee.

Section 5. Local school districts, declared educationally deficient, which fail[ing] to meet or make satisfactory progress toward correcting deficiencies in program and service standards and product standards, after having received technical assistance from the Kentucky Department of Education, shall be subject to direct management intervention by the State Board of Education, as defined by KRS 158.584(4). Satisfactory progress shall be defined as the district's compliance with and adherence to the time lines established in the approved Master Educational Improvement Plan.

Section 6. Subsequent to direct management intervention by the State Board of Education, if the local district still does not meet established time lines for correcting deficiencies, removal from office of a member or members of the local board or the superintendent or other school district personnel, pursuant to KRS 156.132 to 156.136, may be pursued by the state board.

Section 7. A district that has been declared an educationally deficient district by the state board shall be notified of such declaration in writing. At such time as an educationally deficient district shall be cleared by the Kentucky Department of Education of all deficiencies contributing to the declaration of educational deficiency, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall notify such a district in writing.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Fouche
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Reduces submission of plans submitted to Department by local districts in compliance with standards.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Reduces supervision of plan implementation in local districts.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 15:080. Paraprofessional employees and volunteer personnel.

RELATES TO: KRS 161.010, 161.030, 161.044
PURSUANT TO: KRS 156.070, 161.044
NECESSITY AND FUNCTION: KRS 161.010 defines a paraprofessional, KRS 161.030 vests the certification of all teachers and other school personnel with the State Board of Education, and KRS 161.044 directs the State Board to establish a plan for the qualification and utilization of adult paraprofessional employees and adult volunteer personnel in the schools. This regulation prescribes the guidelines by which local school districts may utilize and supervise adult paraprofessional employees and adult volunteer personnel.

Section 1. Local boards of education may utilize adult volunteer and adult paraprofessional employees in accordance with KRS 161.044 and 161.010(4) and (5), and subject to the following provisions:

(1) All instructional teachers' aides working in kindergarten classes and all teachers' aides hired by the local board of education after July 1, 1986, except those with teacher certification, shall be subject to the following requirements:

(a) A high school diploma or a high school equivalency certificate.

(b) A passing score on an achievement test. Beginning with the 1986-87 school year, the Adult Basic Learning Examination (ABLE) shall be utilized to measure achievement in the areas of reading and mathematics. Passing score on the appropriate subtests of the ABLE shall be those scores which are equivalent to the scores obtained by the norming groups at the 22nd percentile.

(c) Successful completion of an in-service training program. The program shall consist of a minimum of twelve (12) hours of formal, documented instruction to include training in the areas of the role of the paraprofessional, educational terminology, school practices and

policies, interpersonal relationships, learning atmosphere and tutorial instruction. Local school districts shall utilize the in-service program designated by the State Board of Education or an alternative program approved by the Department of Education which meets the requirements of this subsection.

(d) An annual evaluation by the appropriate school administrator with input from the supervising teacher or teachers. Local districts shall adopt a policy which sets forth the evaluation process for teachers' aides and the use to be made of such evaluations in future employment decisions.

(2) All full-time noninstructional teachers' aides shall achieve a passing score on an achievement test. The test shall be the same test which is administered to instructional teachers' aides and the passing scores shall be identical to those established for instructional teachers' aides.

(3) Local boards of education shall give preference to an applicant for the position of teacher's aide or paraprofessional who has a regular or emergency teacher certification.

(4) [(1)] For each paraprofessional employee the local school district shall prepare and maintain an up-to-date job description which outlines the duties that the individual is authorized to perform. [and which further describes the formal preparation or professional judgments of competency that corroborate the qualifications of the individual to perform those duties. The professional administrative and teaching staff may establish formal evaluation procedures to arrive at the professional judgments of competency that are to be entered into the written job description.]

(5) [(2)] The professional administrative and teaching staff, as well as the paraprofessional employees, shall have copies of the job descriptions of the paraprofessional personnel under their direction and shall limit the work assignment of the paraprofessional personnel to the duties outlined in the job descriptions.

(6) [(3)] Paraprofessional employees and volunteer personnel may be assigned within the limitations of their competency to assist with classroom and any otherwise authorized community-based instruction, as appropriately directed and [personally] supervised by the professional administrative and teaching staff. Such assistance shall not include the continuing day-to-day responsibility for teaching a particular academic subject or group of pupils in the role ordinarily ascribed to a teacher in the regular, special education, and vocational education program areas, and paraprofessional employees and volunteer personnel involved in regular and remedial classroom instruction shall be personally supervised on a continuing day-to-day basis by the supervising teacher.

Section 2. In the event a local board of education is unable to fully staff an athletic program with qualified personnel under 702 KAR 7:090 Sections 1 and 2, the local district superintendent may request annual approval from the Superintendent of Public Instruction for an alternative staffing arrangement for noncertified paraprofessionals performing routine, assignments, pursuant to 702 KAR 7:090, Section 2(2). Appropriate justification shall be submitted in writing on forms provided by the head of the Office of Instruction.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m., EDT, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its May meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joanne Brooks
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: Estimated 6,000 teacher aides in 180 local districts.
1. First year: $12 fee to each aide to receive GED if not a high school graduate; approximate $10 fee to each aide to cover costs of achievement testing.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs (note any effects upon competition): These are one-time costs to each aide.
(b) Reporting and paperwork requirements: Documentation that the aide: 1) Has a diploma or GED; 2) Passed the achievement test; 3) Completed the training successfully.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Cost of testing instruments and provision of training.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: Costs should decrease over time as most aides meet the qualifications.
(b) Reporting and paperwork requirements: Test scoring, funding processes, routine monitoring reports.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No cost-effective alternatives identified. There is no appropriation for implementing these requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: N/A

Tiering:
Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

707 KAR 1:051. Exceptional children's programs.

RELATES TO: KRS 157.200 to 157.290, 157.360
PURSUANT TO: KRS 156.070, 157.220, 157.221, 157.250, 157.360
NECESSITY AND FUNCTION: KRS 157.200 to 157.290 set forth the state statutory framework for special education programs for exceptional children; and KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children. This regulation establishes requirements for special education programs and is necessary to assure uniformity in providing special education and related services to exceptional children and to conform with Public Law 94-142.

Section 1. General Provisions. Local school boards of education shall operate programs for exceptional children of school attendance age pursuant to KRS 157.200 to 157.290 inclusive, and the criteria listed in this chapter.

(1) Classroom units. Local school districts shall request classroom units for the education of exceptional children from the State Department of Education by filling out the appropriate application(s) as provided by the Office of Education for Exceptional Children, and in accordance with KRS 157.360(6). Application(s) shall be made pursuant to schedules established by the Office of Education for Exceptional Children.

(a) In order to receive tentative allotment of minimum foundation classroom units local school districts shall assure that the following criteria are met:

1. Approved teacher;
2. Approved housing;
3. Approved program plan; and
4. Minimum number of children for type of unit requested.

(b) Pursuant to KRS 157.360(6)(c) and (d), local school districts may choose between two (2) options for reimbursement for exceptional child units to provide home or hospital instruction. The two (2) options are as follows:

1. One (1) unit may be allocated for each ten (10) children in average daily attendance for the current school year, as provided by KRS 157.360(6)(c); or
2. The district may provide home or hospital instruction on an hourly basis, as provided by KRS 157.360(6)(d). The hourly reimbursement rate per child for districts utilizing this option shall be calculated as follows:

State Average Teacher's Salary (185 Day School Term X 6 Instructional Hours) + Current Operating Expense (175 Day Instructional Term X 6 Instructional Hours) = Hourly Reimbursement Rate

A maximum average of three (3) instructional hours per child per week will be reimbursed. The total reimbursement amount must be spent on teacher salary, travel expenses and teaching supplies for the home/hospital program. A minimum of seventy-five (75) percent of the total reimbursement amount must be allocated for teacher salary. An amount not to exceed twenty-five (25) percent of the total reimbursement amount shall be allocated for travel expenses and teaching supplies and equipment.

(c) Local school districts shall receive final allotment of minimum foundation classroom units provided the above criteria are met and the local school district validates to the State Department of Education that said unit(s) is operating pursuant to criteria listed in this chapter. Validation shall be made by filling out appropriate record(s) as provided by the Office of Education for Exceptional Children and shall be made pursuant to established schedules. Final allotment of funds due each district for reimbursement of home and hospital instruction programs shall not be distributed until all monthly attendance reports due for a given school district are received by the Department of Education.

(2) Fractional classroom unit. A fractional classroom unit is a unit having fewer pupils than the prescribed pupil-teacher ratio as indicated in regulations pertaining to the specific categorical program or if the program is in operation for less than a full day or full school year. Such units shall be allotted and certified on a basis proportionate to the pupil-teacher ratio and/or the proportionate length of the school day or the school year.

(3) Qualifications for assignments of special education personnel. Teachers employed for a teaching assignment in a classroom unit for exceptional pupils shall hold appropriate state certification in the area(s) of assignment as required in Title 704 KAR Chapter 20, except as hereinafter provided:

(a) Teachers of classes for severely profoundly handicapped. Teachers assigned to classes established to serve pupils classified as severely/profoundly handicapped (S/PH) shall possess a certificate valid at any grade level for teaching trainable mentally handicapped or severely/profoundly handicapped pupils of any age.

(b) Teachers of classes for multiple handicapped. Teachers assigned to classes established to serve multiple handicapped (MH) pupils shall meet the following requirements:

1. As of September 1, 1986, the assigned teacher shall possess a certificate valid at any grade level for teaching:

a. Trainable mentally handicapped or severely/profoundly handicapped for assignment to classes where the majority of students are multiple handicapped pupils whose intellectual functioning is trainable mentally handicapped; or

b. Educable mentally handicapped, learning disabilities, physically/orthopedically handicapped or learning and behavior disorders for assignment to classes where the majority of students are multiple handicapped (MH) pupils whose intellectual functioning is educable mentally handicapped or above. Severely/profoundly handicapped pupils shall not be assigned to classes taught by teachers with the certification specified in this section.

2. Teachers employed as of September 1, 1985, and assigned to classes for multiple handicapped students who do not possess a certificate as specified in paragraph (b)1a and b of this subsection may continue to be assigned to such classes provided the teacher has had class assignments in a class for multiple handicapped

pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

(c) Teachers of cross-categorical classes. Assignment of teachers [assigned] to special education classes serving more than one (1) category of exceptional pupils (cross-categorical programs) shall meet the following [possess a certificate valid for teaching pupils of each of the specific areas of exceptionality to be enrolled, except as follows]:

1. Local school districts may serve pupils classified as educable mentally handicapped (EMH), learning disabled (LD) and emotionally disturbed (ED) within the same classroom, provided teachers assigned to such classes are certified in at least two (2) of the categories of exceptionality or have certification in the area of learning and behavior disorders (LBD). Teachers employed as of September 1, 1985, with assignments to such classes and who are certified in only one (1) of the areas of exceptionality served may continue to be assigned to such classes until September 1, 1988, by which time appropriate certification must be obtained. Or, teachers employed as of September 1, 1985, and assigned to classes which include pupils of an exceptionality not covered by their certification may continue to be assigned to such classes, provided the teacher has had class assignments which included such exceptional pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

2. Local school districts may serve pupils classified as trainable mentally handicapped, severely/profoundly handicapped and multiple handicapped whose intellectual functioning is trainable mentally handicapped within the same classroom, provided teachers assigned to such classes are certified in trainable mentally handicapped or severely/profoundly handicapped.

3. Local school districts may serve pupils classified as educable mentally handicapped (EMH) and learning disabled (LD) within the same classroom, provided teachers assigned to such classes are certified in the category of exceptionality of the majority of pupils or have certification in the area of learning and behavior disorders (LBD).

(d) Teachers of classes for visually impaired. For the 1986-87 school year only, teachers assigned to special education classes established to serve pupils classified as visually impaired shall possess a certificate valid for teaching either elementary or secondary visually impaired when the pupils assigned include both the elementary and secondary levels of instruction.

(e) Teachers of classes for hearing impaired. For the 1986-87 school year only, teachers assigned to special education classes established to serve pupils classified as hearing impaired shall possess a certificate valid for teaching either elementary or secondary hearing impaired when the pupils assigned include both the elementary and secondary levels of instruction.

(f) Teachers of classes for trainable mentally handicapped.

1. For the 1986-87 school year only, teachers assigned to classes established to serve trainable mentally handicapped and who possess a teaching certificate endorsed for teaching trainable mentally retarded or trainable mentally handicapped, grades 1-8, may be assigned to teach pupils in grades 9-12.

2. For the 1986-87 school year only, teachers assigned to classes established to serve trainable mentally handicapped and who possess a teaching certificate endorsed for teaching trainable mentally retarded or trainable mentally handicapped, grades 7-12, may instruct classes which include pupils from both the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.

(g) Teachers of classes for educable mentally handicapped.

1. For the 1986-87 school year only, teachers assigned to classes established to serve educable mentally handicapped and who possess a teaching certificate endorsed for teaching educable mentally retarded or educable mentally handicapped, grades 1-8, may be assigned to teach pupils in grades 9-12.

2. For the 1986-87 school year only, teachers assigned to classes established to serve educable mentally handicapped and who possess a teaching certificate endorsed for teaching educable mentally retarded or educable mentally handicapped, grades 7-12, may instruct classes which include pupils from both the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.

(h) Teachers with learning and behavior disorders certification. For the 1986-87 school year only, teachers who possess a teaching certificate for learning and behavior disorders, grades 7-12, may instruct classes which include pupils from both the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.

(i) Teachers of exceptional child kindergarten classes. For the 1986-87 school year only, teachers may be assigned to classrooms established to serve kindergarten age pupils classified as handicapped with valid teaching certificates as follows:

1. A certificate or certificate endorsement for teachers of exceptional children valid for grades K-8 or K-12, except those issued for speech and communication disorders; or

2. A certificate or certificate endorsement for teaching any category of special education and valid for grades 1-8 or grades 1-12, except those issued for speech and hearing.

(j) For the 1986-87 school year only, teachers providing instruction to exceptional children at home or in hospitals shall be provided with the skills needed to meet the individual needs as set forth in the individual education program.

(k) [(d)] Local school districts which need to assign teachers to teach classes or pupils not consistent with the above criteria and which do not correspond with the certification of the assigned teachers shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children.

1. The Kentucky Department of Education shall give consideration for such approval based on information provided by the local school district as follows:

a. Request shall be made prior to September 15

or within ten (10) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, social security number and class plan assignment;

b. Teacher's current certification(s) and a listing of pupils by category of exceptionality to be served demonstrating that the teacher meets qualifications for assignment to teach the majority of the exceptional pupils enrolled and that only one (1) additional category of exceptional pupils shall be included in the classroom;

2. The assignment shall not exceed the length of the school year during which it was initiated.

(1) [(e)] Replacement teacher for special education classes. When a local school district loses the services of the approved special education teacher after September 15, a replacement teacher may be used for a classroom unit for exceptional children under the following conditions:

1. The teacher qualifies for assignment to the class as specified in paragraphs (a) through (d) of this subsection.

2. If a teacher with appropriate certification in special education is not available for the vacated position, the local school district may assign a teacher to the class, with the exception of speech and communication disorders, pursuant to the following:

a. The superintendent and the local board of education shall submit an application to the Kentucky Department of Education, Office of Education for Exceptional Children, for each replacement teacher. The application shall be made on forms provided by the Kentucky Department of Education. Information which validates all attempts to employ an appropriately certified teacher shall accompany the application and shall document the following:

(i) Teachers with certification in special education are not available within the local school district for the position.

(ii) Efforts have been made to recruit a teacher certified in special education for the vacant position. This vacancy has been publicized by appropriate means, including advertisement of the vacant position.

(iii) The position will be filled by the best certified person available giving preference to the factors of academic preparation, prior successful teaching experience or related educational work.

b. The replacement teacher must qualify as a basic classroom teacher and hold, at minimum, a provisional elementary, middle or secondary certificate valid for the grade level of the assignment.

c. The replacement teacher may not be employed for the same teaching assignment for the following year without obtaining appropriate certification or endorsement in special education.

d. If the Kentucky Department of Education, Office of Education for Exceptional Children, approves the replacement teacher, the effective employment date for the replacement teacher shall be the date the application and accompanying documentation are received and stamped in by the Office of Education for Exceptional Children.

(4) Program plan. The appropriate program plan for exceptional pupils in the local school district shall be determined by the needs of the pupils. Consideration shall be given to the least restrictive environment concept in the placement of pupils. Programs shall be organized and operated under one or more, or a combination of the following:

(a) Classroom units plans:

1. A resource plan shall be a program which serves exceptional pupils who shall be entered on the class roll of a regular class teacher and shall do part of their classwork in the regular class. The pupils shall receive special instruction from the resource teacher as specified on their individual education programs. The number of pupils served by the resource teacher and the number of pupils in the resource room for instructional purposes at any one (1) time shall be determined by the appropriate categorical regulations. The resource plan shall utilize a classroom-based teacher or an itinerant teacher.

2. A special class plan shall be a classroom-based program which serves exceptional pupils who shall be entered on the class roll of the special class teacher. The pupils shall participate in the regular class program to the maximum extent appropriate as specified on the pupils' individual education programs. The number of pupils and the chronological age range for pupils enrolled in the special class shall be determined by the appropriate categorical regulations. A classroom-based teacher shall be utilized for this plan.

3. A hospital instructional plan shall be a program which provides educational services on a regularly scheduled basis to pupils in a hospital setting. The itinerant teacher providing educational services in the hospital shall keep a regular Kentucky attendance register. A pupil receiving services in a hospital setting shall have a minimum of two (2) one (1) hour visits per week in order to be counted as being in attendance five (5) days. Special education and related services for the identified exceptional pupil in a hospital setting shall be provided as specified on the pupil's individual education program (IEP). The hospital instructional plan shall utilize a classroom-based teacher, an itinerant teacher, or a visiting teacher.

4. A home instruction plan shall be a program which provides educational services to pupils at the home on a regularly scheduled basis. The teacher providing educational services at the home shall keep a regular Kentucky attendance register. A pupil receiving educational services under this plan shall have a minimum of two (2) one (1) hour visits per week in order to be counted in attendance five (5) days. Special education and related services for the identified exceptional pupil served under this plan shall be provided as specified on the pupil's individual education program (IEP). The home instruction plan shall utilize an itinerant teacher or a visiting teacher.

(b) Teacher and housing. Each classroom unit plan shall be housed as specified and shall operate utilizing one (1) of the following types of teachers:

1. A classroom-based teacher shall be an approved teacher who shall provide educational services to exceptional students in a classroom provided for such services. The classroom-based teacher providing services through the resource plan or special class plan shall be housed in an elementary or secondary school dependent upon

the age range of the pupils or in an approved special school or facility. Classroom location shall be made consistent with the least restrictive environment concept. Classrooms shall meet the standards for regular classrooms pursuant to 702 KAR 4:060. The classroom-based teacher providing services in a hospital setting shall be housed in facilities and/or rooms appropriate and adequate for instructing pupils in small groups or individually.

2. An itinerant teacher shall be an approved teacher who travels to exceptional pupils' school(s), class(es), homes, or hospital setting(s) on a regularly scheduled basis to work with pupils either individually or in small groups. Those pupils being served in a school facility shall be entered on the class roll of a regular class teacher and shall receive the majority of their instruction through the regular program. The itinerant teacher shall work with the pupils in an area in the regular classroom or in a room provided for such services. Housing for the itinerant teacher providing services in a school shall be in facilities and/or rooms appropriate for instructing pupils in small groups or individually and shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. The itinerant teacher shall be provided permanent work space. For the itinerant teacher who travels to the pupils' school(s), class(es), homes, or hospital setting(s) the board of education shall defray travel expenses incurred by personnel in the execution of duties related to the program pursuant to 702 KAR 3:120.

3. A visiting teacher shall be an approved teacher in a home and/or hospital program who travels to the necessary setting to provide appropriate instruction to pupils on an hourly basis. Teacher salary, travel expenses, and teaching supplies for the visiting teacher will be provided through the funding mechanism set forth in 707 KAR 1:051, Section 1(b).

(c) A variation plan shall be an alternative to the above plans. The local school district shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of a variation plan. Written requests for such plan shall be made pursuant to provisions established by the Office of Education for Exceptional Children. In granting approval the Office of Education for Exceptional Children shall assure that approved requests for such plan shall contain but not be limited to the following components:

1. Rationale for need of the variation plan;
2. Detailed description of the plan;
3. Verification of teacher's certification in the categorical area of the majority of the students to be served; and
4. Method of evaluation to be used to determine effectiveness of the plan.

(5) Length of school day. The length of school day shall be the same as for non-handicapped children except as specified in KRS 157.270 and 158.060. Requests for and approval of changes in length of school day shall be made in writing pursuant to provisions established by the Office of Education for Exceptional Children.

(6) Instructional materials and equipment. Instructional materials and equipment appropriate to the educational needs of the identified exceptional child shall be provided as required under 704 KAR 2:020.

Section 2. Identification of Exceptional Children. Each local school district shall have in operation policies and procedures to insure that all exceptional children are identified, located and evaluated. As used here, this requirement refers to all exceptional children who are in need of special education and related services and are residing within the jurisdiction of the local school district, including those exceptional children who are out of school; in local school district programs; and, being served by other public and private agencies and institutions within the local school district's jurisdiction. Local school district policies and procedures shall include the development, implementation, monitoring and evaluation of a practical method of determining:

(1) Which children are currently receiving needed special education and related services; and

(2) Which children need special education and related services but are not currently receiving these services.

Section 3. Admissions and Release Committees. Local school district personnel shall establish one (1) district-wide administrative admissions and release committee and a school-based admissions and release committee in each school with appropriate membership and functions as listed below. In addition, for those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees may be established pursuant to approval by the Office of Education for Exceptional Children.

(1) Administrative admissions and release committee. The membership of the Administrative Admissions and Release Committee (AARC) shall consist of:

(a) Director, local school district's program for exceptional children or person having such responsibility, chairperson (permanent member);

(b) Local school district superintendent or designee (permanent member);

(c) Referred pupil's principal and teacher (if the child is enrolled in public or private school);

(d) Involved instructional supervisor depending on the age and level of the child;

(e) The parent(s) of the referred child;

(f) The referred child, where appropriate;

(g) Personnel responsible for providing evaluation information, where appropriate; and

(h) Other persons as requested by any member of the AARC.

(2) The functions of the AARC shall include the following:

(a) Receive referrals of the following nature:

1. Written information on identified children not currently enrolled in the local school district, including those children enrolled in non-public schools, who are thought to need special education and related services.
2. Cases where the school-based admissions and release committee is not able to determine an appropriate educational placement for a referred pupil and make recommendations as to appropriate educational placement.
3. Cases from school-based admissions and release committee where appropriate services are not available within the school.

(b) Follow due process procedures to insure that exceptional children and their parent(s) are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluation to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child. The AARC shall determine if the local school district can provide appropriate services, if local programs must be changed to accommodate the identified child, if additional services or programs will be developed, or if the child must receive services outside the local school district. For those pupils who shall receive services within the local school district, the appropriate school-based admissions and release committee shall assume responsibility for the implementation, monitoring, evaluation and annual review of the IEP as well as annual review of placement. In those cases where the local school district has determined that appropriate special education and related services cannot be provided through existing programs in the local school district, services shall be provided to the identified child pursuant to the following:

1. Local school district referral of an exceptional child to a public or private agency. The Administrative Admissions and Release Committee shall:

a. Contact a public agency or approved private agency/organization, as provided in 707 KAR 1:070, which provides the type of services specified on the child's IEP regarding the possible referral of the child to the agency.

b. Insure that a representative(s) of the receiving agency shall participate in a meeting(s) with the AARC regarding the possible referral. Participation may be provided through attendance at meetings, written communications, and/or individual or conference calls. Receiving agency means an approved agency/organization which has indicated a willingness to provide the services requested by the local school district.

c. In collaboration with representative(s) of the receiving agency, review and revise, where appropriate, the child's IEP.

d. In collaboration with representative(s) of the receiving agency, determine if such agency is the appropriate agency to provide the specified services. If the agency is an appropriate one, such agency assumes responsibility for implementing the provisions of the special education and related services specified on the IEP.

e. The local school district shall be responsible for providing continued educational services to the child until such time as the child enters the programs provided by the receiving agency.

2. Placement of an exceptional child in a public or private agency:

a. Public agency (another local school district, Kentucky School for the Blind, Kentucky School for the Deaf). Upon admission of the referred child to the agency's program, the agency shall: Assume responsibility for providing special education and related services to the exceptional child as specified on the IEP; and, insure that the child and parent(s) are afforded all rights and protections as required and provided in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060.

b. An admissions and release committee of the receiving public agency shall: Conduct meetings for the purposes of reviewing and where appropriate revising the IEP, assure that the IEP shall be reviewed on at least an annual basis and revised where appropriate; insure that any review (including annual review) and revision of the IEP shall be done with the input and approval of the parent(s); and, insure that any review and revisions of the IEP shall include input and approval of the local school district placing the child in the program. The participation of the parent(s) and the local school district placing the child may take place through attendance at meetings, written communications and/or individual or conference calls.

c. Monitoring and evaluation of the IEP shall be done by specific members of the receiving public agency's admissions and release committee at intervals specified on the IEP. This shall be done to document progress and mastery of objectives specified in the IEP. Written results of such monitoring and evaluation shall be forwarded to the parent(s) and the Administrative Admissions and Release Committee of the local school district placing the child in the agency's program.

d. Responsibilities of the Administrative Admissions and Release Committee of the local school district placing the child in another public agency shall be: participation in meetings called by the receiving agency for the purpose of review and revision of the IEP; and, at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to his educational progress in that setting.

e. Private agency/organization (as defined in 707 KAR 1:070) the private agency shall provide those special education and related services specified on the child's IEP. At the discretion of the local school district, the private agency may initiate and conduct meetings for the purposes of reviewing and revising the child's IEP. When circumstances warrant, the private agency shall be responsible for notifying the local school district of the need to initiate and conduct a meeting for such purposes. The local school district shall insure that the parent(s) and a local school district representative(s) are involved in any decision regarding review and revisions of the child's IEP; and, agree to any placement changes before such changes are implemented.

f. Responsibilities for the Administrative Admissions and Release Committee of the local school district placing the child in a private agency shall be: participation in meetings called by the receiving agency regarding review and revision of the IEP; at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to the educational progress

in that setting; and, insuring that the child and parent(s) are afforded all rights and protections as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060.

(g) For those referred pupils who are determined by the AARC not to need special education and related services, the AARC shall provide the referring person and the parents with written explanation of why the child is not to receive special education and related services, shall provide in writing recommended remedial action, and shall provide written notice pursuant to 707 KAR 1:060.

(3) School-based admissions and release committee (SBARC). The membership of the school-based admissions and release committee shall consist of:

(a) Chairperson, building principal or designee. The designee shall be recommended by the building principal and approved by the local school superintendent. This person shall not be a regular or special education teacher, (permanent member).

(b) Referring person(s) or the referred child's regular teacher(s);

(c) Teacher(s) of exceptional children;

(d) Parent(s) of the referred pupil;

(e) The referred child, where appropriate;

(f) Other persons providing input into the referred pupil's educational program as requested by any member of the SBARC; and

(g) Personnel responsible for providing evaluation information, as appropriate. For a child who has been evaluated for the first time, the chairperson shall assure that a member of the evaluation team participates in the meeting; or that a representative of the school district is present who is knowledgeable about the evaluation procedures used with the child and is familiar with the results.

(4) The functions of the SBARC shall include the following:

(a) Receive written referrals on pupils currently enrolled in the school and thought to need special education and related services.

(b) Follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluations to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child.

(g) At least annually, review the pupil's IEP and review the placement of each exceptional child in the school in relation to his or her educational progress in that setting to determine:

1. Continuation of current educational placement;

2. Change in educational placement; or

3. That special education and related services are no longer needed.

(h) For those referred pupils who are determined by the SBARC not to need special education and related services the SBARC shall provide the referring person and the parents with written explanation why the child is not to receive special education and related services, shall provide in writing recommended remedial actions, and shall provide written notice pursuant to 707 KAR 1:060.

(i) Refer cases where appropriate services are not available within the school to the AARC.

(5) If at any time during the school year, the child's IEP or educational placement appears to be inappropriate to the parent(s), the principal, the teacher(s) or specialist(s) providing services to the child, any one of such persons may request a review of placement. The appropriate admissions and release committee shall conduct the review. The child, parent(s) and local school district shall be afforded all due process rights as described in 707 KAR 1:060. When a review is requested for the purpose of securing a more restrictive or less restrictive environment, the appropriate admissions and release committee shall determine that the child's needs can appropriately be met in the proposed setting and the child's placement and educational program shall be changed and support services provided as necessary.

(6) At any time, during the three (3) years following an individual evaluation utilized for initial placement purposes, or for re-evaluation purposes, the parent(s), principal, teacher(s), or specialist(s) providing services to the child may request a re-evaluation. The appropriate admissions and release committee shall be responsible for assuring that such evaluation(s) are obtained or conducted, and shall follow the procedures outlined in Section 3(2) and (4) of this regulation, functions of the AARC and SBARC.

(7) Sub-district admissions and release committees: For those school districts with a school census figure of 15,000 or over, sub-district admissions and release committees (ARCs) may be established within the local school district to facilitate school to school placements. The sub-district ARCs shall not supplant administrative and school-based admissions and release committees and their respective functions. Sub-district ARCs shall be established to conform with district-specified school groupings. Those local school districts wishing to establish sub-district ARCs shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of the plan and pursuant to provisions specified by the Office of Education for Exceptional Children. The membership and functions of sub-district committees shall be similar to the membership and the functions of the administrative admissions and release committee.

Section 4. Child Evaluation. Child evaluation refers to the sum total of information needed to make educational decisions about the child, including information obtained from such sources as informal and formal testing, aptitude and achievement tests, behavior observation, teacher/parent interviews, work samples, social/developmental history, medical history, school records and anecdotal records. The appropriate admissions and release committee shall be responsible for assuring that child evaluation information is obtained from all available sources, documented and carefully

considered in making placement decisions pursuant to the following:

(1) All due process procedures related to evaluation as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(2) Appropriate evaluations shall be conducted by a multidisciplinary team. Evaluation personnel shall be determined by the appropriate admissions and release committee and shall include at least one (1) teacher or other specialist with knowledge in the suspected area of exceptionality.

(3) Areas for evaluation shall be determined by the appropriate admissions and release committee and as specified by regulations related to the suspected area of exceptionality, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(4) Evaluation procedures. To the maximum extent possible, child evaluation procedures shall be non-discriminatory in that:

(a) Techniques and/or materials used are non-biased relative to race, culture, socio-economic status or impaired sensory, manual, or speaking skills, in order to insure that test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure.

(b) Qualified personnel provide the evaluation services. Qualified personnel refers to those certified special education personnel and others who have met approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area of child evaluation. Such personnel shall be trained in specific areas of child evaluation and shall assure that they:

1. Have the expertise to conduct the evaluation;

2. Understand the use of the different evaluation procedures; and

3. Properly administer and interpret the evaluation results.

4. Such personnel may include but are not limited to: educational diagnosticians, assessment specialists, classroom teachers, speech and language therapists, psychologists, psychometrists, counselors.

(c) Tests and materials are provided and administered in the child's native language or primary mode of communication, unless it is clearly not feasible to do so.

(d) Tests and materials have been validated for the specific purpose for which they are used.

(e) Tests and materials are administered by trained personnel in conformance with the instructions provided by the producer.

(f) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(5) No single evaluation procedure shall be used to determine an appropriate program for a child.

(6) Each child placed in a program for exceptional children shall be re-evaluated every three years or more frequently as warranted.

(7) Any evaluation conducted within one year prior to the current referral may be accepted by the appropriate admissions and release committee as a legitimate substitute for another evaluation of the same type provided the information obtained meets the criteria specified in subsection (1) to (5) of this section.

Section 5. Individual Education Programs (IEP). The appropriate admissions and release committee shall be responsible for the development, implementation, and monitoring/evaluation of each exceptional child's individual education program.

(1) Development. The individual education program shall include but not be limited to the following components:

(a) Present level of educational/behavioral performance including a written summary of strengths and weaknesses.

(b) Annual goals based on child's current level of functioning.

(c) Short term instructional objectives for each of the annual goals. Short term instructional objectives refer to measurable intermediate steps between the present level of educational/behavioral performance and the specified annual goals. These objectives are identified for the purpose of periodically reviewing and evaluating pupil progress toward meeting the annual goal(s) specified on the IEP.

(d) Specific special education and related services needed to meet the specified goals and objectives.

(e) Extent to which the child will participate in the regular education program.

(f) Projected dates for initiation of specified educational and related services.

(g) Anticipated duration of the specified special education and related services.

(h) Appropriate objective criteria and evaluation procedures; and

(i) Schedule for determining, at least on an annual basis, whether the goals and objectives are being achieved.

(2) Implementation and evaluation. The appropriate admissions and release committee shall be responsible for assuring that strategies and activities designed to meet short-term objectives are implemented, and that the child's progress toward and mastery of the short-term objectives is evaluated at least annually.

(a) For each short-term objective specified on the IEP the appropriate admissions and release committee shall assign a specific person(s) who shall be responsible for determining and implementing appropriate strategies and activities that will assist the child in achieving the specified objectives and goals.

(b) The implementer(s) shall maintain records of student progress in achieving short term objectives.

(c) The above records shall be utilized by the implementer and the appropriate admissions and release committee for on-going evaluation of the IEP to determine the effectiveness and appropriateness of the IEP and to document implementation of the IEP.

Section 6. Placement. Placement shall mean the special education and related services provided an exceptional child and shall not refer solely to enrollment in a minimum foundation program classroom unit for exceptional children.

(1) All exceptional children as defined in KRS 157.200 are eligible for placement. The appropriate admissions and release committee

shall identify the specific handicapping condition of the child. The specific area of exceptionality (handicapping condition) of the child shall be that category for which the child meets eligibility criteria following evaluation procedures as specified in the appropriate categorical regulations.

(2) All due process procedures related to placement as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(3) For each identified exceptional child needing special education and related services, the appropriate admissions and release committee shall:

(a) Determine placement;

(b) Base placement on the child's IEP;

(c) Determine placement at least annually; and

(d) Make placement consistent with the least restrictive environment concept as required in Section 7 of this regulation.

(4) Temporary placement. Temporary placement may occur for thirty (30) school days, upon written request from the parent(s), for those exceptional pupils who are new enrollees to the local school district and who have been provided special education and related services by another local school or agency in the school days preceding the request. Documentation shall be on record that special education and related services were provided to the pupil by the other school district or agency. The pupil shall be placed in the same type program as previously provided and in accordance with the IEP. Within the thirty (30) school days the admissions and release committee shall convene to carry out its functions as specified in Section 3(4) of this regulation.

(5) Trial placement. Trial placement shall be a temporary placement for students not new to the school or school system and may be considered pursuant to the following conditions:

(a) The placement shall be for no longer than four (4) school months and shall not be continued beyond this time as a trial placement.

(b) Written rationale justifying the trial placement shall be provided by the admissions and release committee recommending such placement and shall be maintained with the IEP.

(c) The pupil shall have an IEP specifying trial placement and the starting and ending dates of such placement.

(d) A trial placement shall not serve as a substitution for a more appropriate placement.

(e) The appropriate admissions and release committee shall review the trial placement no later than four (4) school months after initiation of services to determine the effectiveness of such services, and to make recommendations for continuation in that program or a change in program.

(f) All due process procedures as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060 shall be afforded the parent, child, and school, including written parental permission for trial placement.

(6) Change in placement. Change in placement refers to those actions that cause a significant alteration in programming for a child who is currently receiving special education and related services.

(a) Change in placement shall mean, but not be limited to, a change from:

1. Special education and related services to regular education, including regular education with support services;

2. One (1) categorical program to another (e.g., TMH to EMH);

3. Or to a more or less restrictive environment (e.g., special class to resource room).

(b) Any change in placement shall follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement, including the written prior notice requirements as specified in 707 KAR 1:060.

(c) Any change in placement shall be subject to established admissions and release committee procedures and consideration of the least restrictive environment concept.

Section 7. Least Restrictive Environment. Least restrictive environment refers to that educational setting or program in which he identified child can function most effectively based upon his/her unique needs and capabilities.

(1) To the maximum extent appropriate exceptional children as defined in KRS 157.200 including those children in public or private institutions or other care facilities shall be educated with children who are not identified as exceptional.

(2) Self-contained classes, separate schooling or other removal of exceptional children from the regular educational environment shall occur only when the nature or severity of the exceptionality is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Unless an exceptional child's individual education program requires some other arrangement, the child shall be educated in the school in which he or she would attend if not identified as exceptional.

(4) Each agency providing educational services shall insure that a continuum of placement alternatives is available to meet the needs of exceptional children for special education and related services. The alternatives shall include but not be limited to instruction in the regular classroom, special classes, special schools and home and hospital instruction. The alternatives shall also make provision for supplemental services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(5) The identified child shall be returned to the most normal setting possible when specified goals and objectives have been achieved, consistent with the child's capabilities and educational needs and as determined by the appropriate admissions and release committee.

Section 8. Program Completion. An exceptional pupil shall be granted a high school diploma pursuant to meeting criteria and standards as provided in the "Program of Studies for Kentucky Schools." These pupils should be considered a part of the graduating class and no distinction shall be made in the ceremonies.

Section 9. Procedural Safeguards. (1) Each local school district shall establish and implement reasonable timelines in order for the identification, evaluation, and placement of referred pupils to occur without delay and pursuant to the specifications of this section and 707 KAR 1:060.

(2) Each child and his or her parent(s) and the local school district shall be guaranteed procedural safeguards in decisions regarding identification, location, evaluation and educational placement of the child in programs for exceptional children as provided in 707 KAR 1:060, the "Due Process Policy and Procedure Manual." These safeguards shall include the following:

(a) The child shall be represented by his or her parent(s) at all decision making points in the identification, evaluation and placement process. "Parent" refers to a natural mother or father, adoptive mother or father, a legally appointed guardian, a person acting as a parent of a child, (grandparent, stepparent, etc.) or a surrogate parent appointed to act in this capacity.

(b) The parent(s) shall receive written notification from the local school district that their child has been referred as a possible candidate for programs for exceptional children and that the child has the right to receive a free, appropriate public education.

(c) Parent(s) shall receive written notification in English and the primary language of the home regarding identification, evaluation and placement procedures.

(d) The local school district shall obtain written parental permission prior to initial individual evaluation and initial placement in a program for exceptional children.

(e) The local school district shall provide the parent(s) with written notification of continuation of placement.

(f) The parent(s) shall have the right to obtain an independent educational evaluation conducted by a qualified examiner. The results of this evaluation must be considered in decisions regarding the provision of a free appropriate public education to the child.

(g) In accordance with procedures outlined in 707 KAR 1:060, the "Due Process Policy and Procedure Manual," either the parent(s) or the local school district may request an impartial due process hearing to resolve disagreements regarding proposed or refused actions related to the identification, evaluation and educational placement of exceptional children. Appeals related to the due process hearing decision shall be conducted pursuant to 707 KAR 1:080.

(h) Where a child's parent(s) or guardian(s) are not known, whereabouts of the parent cannot be determined or the child is a ward of the state (parental rights have been terminated), such child shall be assigned a surrogate parent to represent him/her in all matters relating to the provision of a free, appropriate public education.

1. The local school district in cooperation with other public and private agencies shall recruit persons who can and will serve as surrogate parents. Persons selected as surrogate parents shall:

a. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

b. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

c. Be familiar with the educational system within the state;

d. Be readily accessible to the children they represent;

e. Be an adult - eighteen (18) or over; and

f. Be a U.S. citizen.

2. Assignment of a surrogate to a particular child shall be made by the local school district according to the following procedures:

a. Any person including local school district personnel, may file a request for a surrogate to represent a child with the child's local school district.

b. The local school district shall acquire the proper documentation to substantiate the need for a surrogate parent. Justification and documentation for surrogate parent assignment shall be:

JUSTIFICATION FOR SURROGATE	DOCUMENTATION NEEDED
No parent (as defined by federal regulation 34 CFR 300.10) can be identified. 34 CFR 300.10 the term "parent" means a parent, a guardian, a person acting as a surrogate parent of a child, or a surrogate parent. This term does not include the state if the child is a ward of the state. Comment: The term "parent's" defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to the parent(s) or guardian(s) at their last known address, documentation from the Cabinet for Human Resources that no parent exists or a copy of death certificate(s).
Whereabouts of the parent cannot be determined.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to parent(s) or guardian(s), at their last known address.
Child is a ward of the state and parental rights have been terminated.	A copy of the court order terminating the rights of the parent(s) or an affidavit from the local Cabinet for Human Resources, Social Services Field Office Supervisor, stating the child's name, birthdate, county of termination, and signature and title of the person giving it.

c. The local school district shall assign a surrogate within fifteen (15) school days of the receipt of request for surrogate parent.

d. The assigned surrogate shall represent the child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to

children who have reached the age of majority.

f. An individual assigned as a surrogate shall not be an employee of a public agency involved in the education or care of the child.

(i) Testing and evaluation materials utilized for the purpose of evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

(j) Decisions regarding the placement of exceptional children shall be made with regard to educating these pupils to the maximum extent appropriate with their non-handicapped peers in the least restrictive environment.

Section 10. Confidentiality of Personally Identifiable Information. The public agency shall develop and adopt policies and procedures consistent with the provisions of the Family Educational Rights and Privacy Act and confidentiality requirements of PL 94-142 for all exceptional children. These shall include the following:

(1) Parent(s) shall be notified annually of all requirements concerning personally identifiable information.

(2) Educational records collected, maintained, and used by the agency are open for inspection and review by the child's parent(s) and a representative of the parent(s).

(3) The agency shall comply with a parental request to inspect and review records without unnecessary delay, before any meeting of the admissions and release committee, before an impartial due process hearing, and in no case more than forty-five (45) days after the request has been made.

(4) Upon request of the parent(s) the public agency must provide an explanation and interpretation of such records.

(5) Copies of the records must be provided if failure to do so would prevent the parent(s) from exercising their right to review and inspect the records. A nominal fee may be charged unless it would prevent such access rights. A fee may not be charged for record search or retrieval.

(6) An agency may presume that the parent(s) has the authority to inspect and review records relating to his/her child unless the agency has been advised that the parent(s) does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(7) A record of access shall be maintained for those individuals obtaining access to such records, except the parent(s) and authorized parties of the agency, including the name of the party, the date of access, and the purpose for which the party was authorized to use the records.

(8) Information from records containing data on more than one (1) child shall be provided in such a way as to preserve the confidentiality of the other pupils.

(9) A list of the location and types of education records collected, maintained and used by the agency shall be provided by the agency to parent(s) on request.

(10) The parent(s) have the right to request an amendment of information in the education records pursuant to the following:

(a) The agency shall decide whether to amend the information within a reasonable period of time of receipt of the request and shall notify the parent(s) to this effect.

(b) If the agency refuses to amend the records, it shall inform the parent(s) of their right to a record amendment hearing.

(c) If the result of the hearing does not require such amendment, the parent(s) has the right to place a statement outlining the points of dissent in the education records. This statement must accompany the information each time it is released.

(d) If the agency amends the records as a result of the hearing, it shall so inform the parent(s) in writing.

(11) Parental consent must be obtained before disclosing personally identifiable information to individuals or agencies unless otherwise authorized to do so as delineated in the Family Educational Rights and Privacy Act and PL 94-142.

(12) Each agency shall protect the confidentiality of records at collection, storage, disclosure and destruction stages and shall insure that all persons collecting or using records receive training in confidentiality requirements.

(13) One (1) agency official shall assume responsibility for insuring the confidentiality of personally identifiable information.

(14) A current listing of the names and titles of individuals in the public agency who have access to education records must be maintained for public inspection.

(15) Public agencies must inform the parent(s) when education records are no longer needed for educational services and destroy that information upon request of the parent(s). The agency must inform the parent(s) that such information could be needed later for social security benefits or other purposes. A permanent record of the pupil's name, address, phone, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Vivian Line
(1) Type and number of entities affected: 180 local school districts.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Decrease in paperwork requirements.
(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings: N/A
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: Decrease in paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: Incorporation of pre-existing policies due to shortage of certified teachers.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: See (6)
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Necessary to specify qualifications of assignment of special education teachers.

Tiering:
Was tiering applied? No. Not applicable because all local school districts are required to have equally qualified personnel.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Programs
(Proposed Amendment)

709 KAR 1:030. High school equivalency certificate.

RELATES TO: KRS [156.070,] 156.485
PURSUANT TO: KRS 13A.100, 156.070 [Chapter 13A]
NECESSITY AND FUNCTION: KRS 156.485 establishes and recognizes the GED test for high school equivalency purposes in Kentucky and allows a five (5) dollar fee to be assessed for duplicate equivalency certificates. This regulation establishes [To establish] the means whereby a High School Equivalency Certificate can be issued through the Department of Education to adults who pass the GED test.

Section 1. All GED test scanner sheets from official testing centers shall be sent to the State Department of Education for scoring. The State Department of Education shall provide a high school equivalency certificate to local boards of education to be issued to each applicant who has taken the GED test and who [meets the following qualifications:
(1)] Has scored at least thirty-five (35) on each of the five (5) GED tests and has an overall average standard score of forty-five (45) on all five (5) tests when they are considered as a whole[;
(2) Is at least seventeen (17) years of age or older who has been out of a formal classroom situation for a period of one (1) year; or]
[(3) Whose high school class (the class of which he was or would have been a member) has graduated].

Section 2. There shall be no minimum age requirement for issuance of a high school equivalency certificate to military personnel or veterans.

Section 3. GED test scores shall be accepted as official only when they are reported by official testing centers; the United States Armed Forces Institute; directors of Veterans Administration hospitals; and, in special cases, the GED testing service.

Section 4. There shall be no charge for the issuance of a high school equivalency certificate. A five (5) dollar fee shall be assessed for the issuance of a duplicate GED certificate. Said fees shall be used to support the adult education program.

ALICE McDONALD, Superintendent
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 9, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing has been scheduled on August 21, 1986, at 10 a.m. Eastern Daylight Time, in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, to review the regulations adopted by the State Board of Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Laurel True, Secretary, State Board of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 16, 1986. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Alice McDonald and Sharon Darling
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Approximately 725 individuals @ $5.00 each for a total cost of $3,625.
2. Continuing costs or savings: Cost of approximately $3,500 a year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): By charging a $5.00 fee for issuing a duplicate G.E.D. certificate, the number of requests would hopefully diminish.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Savings of approximately $3,625.
2. Continuing costs or savings: Savings of approximately $3,500 a year.
3. Additional factors increasing or decreasing costs: The increase in revenues would provide for a more efficient administration.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: The Kentucky Department of Education will be able to decrease the turn around time on duplicate requests by employing a .3 FTE to perform this task.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. To provide for uniformity in the issuing of G.E.D. Certificates.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Registry of Election Finance
(Proposed Amendment)

801 KAR 2:010. Processing complaints; hearings.

RELATES TO: KRS Chapter 121
PURSUANT TO: KRS 121.120
NECESSITY AND FUNCTION: KRS 121.120(3) provides for the Registry to adopt rules and regulations to effectuate the purposes and provisions of the Act. The rules of practice and procedure before the Registry are designed to inform the citizens of the Commonwealth of the steps to be followed in the processing of complaints by investigation or public hearing.

Section 1. Definitions. When used in this regulation:
(1) "Act" means the Kentucky Campaign Finance Regulation [Corrupt Practices Act], KRS Chapter 121.
(2) "Registry" means the Kentucky Registry of Election Finance.
(3) "Election" means any primary, regular or special election to fill vacancies.
(4) "Complainant" means any registered voter who files a complaint with the Registry, as required by KRS 121.140.
(5) "Executive Director" shall be the person appointed by the Registry and referred to in KRS 121.120(1).
(6) "Chairman" shall mean the duly appointed Chairman of the Kentucky Registry of Election Finance.
(7) "Hearing officer" shall mean the person designated by the chairman, with concurrence of the Registry, to conduct a hearing, or the Registry.
(8) "Investigator" shall mean a member of the staff of the Registry designated by the executive director to investigate the allegations of any complaint, or to investigate any matter arising out of KRS Chapter 121.

Section 2. Complaint. (1) Who may file:
(a) Any registered voter claiming the commission of a violation [corrupt practice] under this Act may make, sign, and file with the Registry a written, sworn complaint. Assistance in drafting and filing such complaint shall be made available to any complainant at the Registry's office.
(b) The chairman may, in a like manner, make, sign, and file such a complaint.
(2) Complaint form. The complaint shall be in writing. The complaint must be signed and sworn before a Notary Public or other person duly authorized by law to administer oaths and take acknowledgements. Notarial service shall be furnished without charge by the Registry.
(3) Contents:
(a) A complaint shall contain the following:
1. The full name and address of the complainant.
2. The name and address, if known, of the person, persons, or organization against whom the complaint is made.
3. A short and plain statement of the facts showing that a violation of the Act has occurred.
(b) A complaint should contain the following:
1. The date or dates and time of the alleged violation [corrupt practice]; and if the alleged violation [corrupt practice] is of a continuing nature, the dates between which said violation(s) [corrupt practices] are alleged to have occurred.
2. A statement as to any other action, civil or criminal, instituted by the complainant in any other forum based upon the same facts as are [is] alleged in the complaint, together with a statement as to the status or disposition of such other action.
(4) Time of filing. A complaint alleging violation [corrupt practice] may be filed within two (2) years after the alleged violation [corrupt practice] occurs. If the alleged practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice shall have ceased, or the date on which the complaint shall have been filed if the practice is still continuing.
(5) Place of filing. A complaint shall be filed with the Registry at its office.
(6) Manner of filing. The complaint may be filed by a personal delivery or by mailing of same to the Registry's office. A complaint may be delivered to the executive director or to a member of the Registry staff.
(7) Amendment of complaint. The Registry or the hearing officer [or the complainant] shall have the power reasonably and fairly to grant amendment of [amend] a complaint.
(a) The power to amend a complaint may be exercised by the Registry staff with the consent of the complainant.
(b) The complainant's power to amend the complaint may be exercised prior to the issuance of a notice of hearing as a matter of right, and after notice of hearing at the discretion of the executive director, the Registry concurring.
(c) If the complaint is amended, postponement of the hearing date may be granted to the respondent upon a request to the Registry. In no event shall such hearing date be more than ten (10) days later than the original hearing date.
(8) Withdrawal of complaint. Upon the written request of the complainant, stating the reasons for such request, a complaint, or any part thereof, may be withdrawn only on written consent as hereinafter set forth:
(a) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the executive director shall be obtained.
(b) If the request for withdrawal is made after the date has been noted for hearing, the written consent of the chairman shall be obtained.
(c) In either case, such withdrawal may [shall] be ordered without prejudice to the rights of the complainant or to the Registry to reinstitute.
(9) Dismissal of complaint. If the executive director shall determine from the face of the complaint or after an investigation that the complaint does not state reasonable grounds to believe a violation of KRS Chapter 121 has occurred, he/she shall recommend to the Registry that same be dismissed and notify the parties by mail of such determination and of the complainant's right to appeal to the Registry

for reconsideration of such recommendation [dismissal].

Section 3. Investigation; Production of Evidence; Confidentiality. (1) Investigation. After the filing of a complaint, the executive director may [shall] direct an [the] investigation as the chief investigator. The investigator shall make a prompt and thorough investigation of the allegations of the complaint.

(2) Production of evidence:

(a) An investigator may at any reasonable time, request access to premises, records, and documents relevant to the complaint.

(b) If such request is denied, the Registry may issue a subpoena duces tecum requiring the production of such documents.

(c) If a person, persons or organization fails to permit access, examination, photographing, or copying, the Registry may apply to a circuit court for an order requiring the permitting of same.

(3) Confidentiality. All matters relating to the investigation of a complaint shall be kept confidential pending a determination by the Registry that there appears to be probable cause [reasonable grounds] to believe that a violation has occurred, at which time the matter shall be scheduled for a hearing.

Section 4. Hearing Ordered; Notice. (1) When hearings ordered:

(a) After a finding of probable cause [reasonable grounds] to believe that a violation of KRS Chapter 121 has occurred, the results of the investigation shall be reported to the executive director, who shall report same to the chairman with recommendation on the scheduling of a hearing.

(b) The chairman may thereupon appoint a presiding hearing officer and shall set a time for the holding of a hearing.

(2) Notice of hearing:

(a) The notice of hearing shall state the time and place of said hearing and shall be served on all parties at least ten (10) days prior to hearing date.

[(b) The notice of hearing and sworn complaint, as the same may have been amended, shall be served by registered or certified mail on the respondent at least ten (10) days prior to the date of the hearing, and the complainant shall be furnished a copy of such notice.]

(b) [(c)] If a party is represented by an attorney, a copy of the notice of hearing and complaint, as the same may have been amended, shall be furnished to said attorney.

(3) Place of hearing. The place of any hearing shall be at the office of the Registry, or such other place as may be designated by it. The Registry shall give consideration to any requests for a change of hearing location made by a complainant or a respondent.

Section 5. Hearings. (1) Appearances. The complainant shall[, if requested,] appear personally at the hearing, with or without counsel, and submit testimony. The respondent may appear at the hearing with or without counsel and may examine and cross-examine witnesses and may present evidence. The complainant and the legal counsel for the Registry, and in the discretion of the hearing officer, any other person may intervene, examine and cross-examine witnesses and present evidence. Failure of the complainant to appear shall be grounds for dismissal.

(2) Who shall conduct. Hearings may be conducted before a hearing officer appointed by the chairman or before the Registry, [as a whole] as the chairman may elect.

(3) Power and duties of the chairman/hearing officer. The chairman/hearing officer shall have full authority to control the procedure of a hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The chairman/hearing officer shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The chairman/hearing officer may call and examine witnesses, direct the production of papers or documents, and introduce the same into the record of the proceedings. If the proceeding is before the Registry [as a whole], all matters requiring a decision shall be made by a vote of the members of the Registry with the chairman casting the deciding vote in case of a tie.

(4) Procedure:

(a) The case in support of the complaint may [shall] be presented before the Registry/hearing officer by the legal counsel for the Registry. The complainant or his counsel may also present any evidence [case] in support of the complaint.

(b) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs. However, irrelevant, immaterial, scandalous, or unduly repetitious evidence shall be excluded, and the rules of privilege shall be given effect.

(c) All testimony shall be given under oath or affirmation, and the record of the proceedings shall be made and kept.

(d) Two (2) or more proceedings under this Act may be joined by the Registry in its discretion.

(5) Stipulations. The parties may file a stipulation as to the facts in which event the same shall be numbered and used at the hearing. Such stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments. The chairman/hearing officer may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing, or by appropriate notice to all parties.

(7) Motions and objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated in writing or orally and shall be included in the record of the hearings.

(8) Oral arguments and briefs. The chairman/hearing officer may [shall] permit the parties, their attorneys, or the members of the Registry staff presenting the case in support of the complaint, to argue orally and to file briefs within such time limits as the chairman/hearing officer may determine.

(9) Improper conduct. The chairman/hearing officer may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct.

(10) Public hearings. All Registry hearings shall be open to the public unless the respondent requests a closed hearing [chairman or the hearing officer, acting under the appropriate provisions of the Kentucky Revised

Statutes, in his discretion, should direct otherwise].

(11) Written transcript of the record. The written transcript of the record shall consist of the notice of the hearing, the sworn complaint, as the same may have been amended, the transcript of the testimony taken at the hearings, the exhibits and depositions offered in evidence, written applications, briefs, orders, motions, and oral arguments if directed by the hearing officer, stipulations, the findings of fact, conclusion of law, and the final findings or actions taken by the Registry.

Section 6. Discovery. (1) Subpoenas:

(a) Issuance of subpoena. Whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question before the Registry, the executive director may issue a subpoena or subpoena duces tecum and thereby compel such attendance of witnesses or production for examination of books, papers, and records.

(b) Issuance of subpoena at instance of party. The executive director, or in his/her absence, the chairman may issue such subpoena or subpoena duces tecum, as may be required, at the instance of any party to a hearing or other proceedings. The issuance of such subpoena or subpoena duces tecum at the instance of a party shall depend upon a showing of the necessity thereof.

(c) Fees. Where a subpoena or subpoena duces tecum is applied for and issued at the instance of any party to a hearing or other proceeding, the cost of service, witness, and mileage fees, if any, shall be borne by the party at whose instance it has been requested and issued unless otherwise ordered by the Registry. Where a subpoena or subpoena duces tecum is issued at the instance of the executive director, the cost of such service, witness, and mileage fees, if any, shall be borne by the Registry.

(2) Depositions and interrogatories:

(a) Depositions of witnesses, including any party, may be taken as prescribed by the Kentucky Rules of Civil Procedure.

(b) Interrogatories. The Registry may, at any time after complaint is filed, require any party or witness to answer interrogatories. The procedure for interrogatories shall conform to the Kentucky Rules of Civil Procedure.

(3) Refusal to make discovery. If a person fails to permit access, fails to comply with a subpoena, refuses to have his deposition taken, refuses to comply with a subpoena duces tecum, refuses to answer interrogatories or otherwise refuses to make discovery, the Registry may request an order of a circuit court requiring said discovery.

Section 7. Orders. (1) Contents of finding. A finding of the Registry issued after hearing shall set forth the findings of fact and conclusions of law of the hearing officer, the Registry's final decision, and in the discretion of the Registry, an opinion containing the reasons for said decision, which may be in lieu of specific findings and conclusions.

(2) Issuance of orders:

(a) If upon all the evidence it appears that a respondent has engaged in any willful violation [corrupt practice], the Registry shall state its findings of fact and conclusions of law, and based thereon cause same to be delivered to the Attorney General or to the appropriate Commonwealth Attorney for further action.

(b) If upon all the evidence, the Registry shall find that a respondent has not engaged in a violation [corrupt practice], it shall state the findings of fact and conclusions of law and shall dismiss the complaint.

(3) Filing. All findings issued by the Registry after a hearing shall be filed in the Registry's office.

Section 8. Reopening of Proceedings. Who may open. After a hearing and the issuance of a final order, the Registry may, upon its own motion or upon application of any party or intervening party, for good cause shown, or whenever justice so requires, reopen any closed proceeding upon notice to all the parties and intervenors, and may take such action as it shall deem necessary.

Section 9. Certification. The chairman, or the executive director, is authorized and empowered to certify all documents or records which are a part of the files and records of the Registry.

Section 10. Construction of Rules and Pleadings. (1) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of KRS Chapter 121 and the policies of the Kentucky Registry of Election Finance.

(2) All pleadings shall be liberally construed with a view to effect justice, and the Registry and hearing officer will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

Section 11. General Investigations. The Registry, in its discretion, may conduct such general investigations into the problems of the Kentucky Campaign Finance Regulation [corrupt practices] as it deems necessary or desirable [to effectuate the purposes of KRS Chapter 121 and particularly KRS 121.120(3)(n)]. Fairness demands that investigations be initiated only on credible allegations which are sufficiently specific to be capable of corrobration through investigation. Mere suspicion, rumor or innuendo are not sufficient grounds on which an investigation may be justified.

CHARLES BEACH, JR., Chairman
BOB DAVIS, Secretary
APPROVED BY AGENCY: June 18, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986, at 9 a.m. in the Office of the Registry of Election Finance, 1604 Louisville Road, Frankfort, Kentucky. However, this hearing shall be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Allen Prewitt, Jr., Counsel, Registry of Election Finance, 1604 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Raymond E. Wallace

(1) Type and number of entities affected: Persons against whom complaints are filed relative to violations of Campaign Finance Law. Number: Indeterminate.
(a) Direct and indirect costs or savings to those affected:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: N/A
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $5,000 cost
2. Continuing costs or savings: $5,000 cost
3. Additional factors increasing or decreasing costs: Special hearings will increase costs. Cannot be predetermined.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: KRS 121.120(2) directs the Registry to conduct hearings with regard to possible violations. KRS 121.120(3) directs the Registry adopt such regulations as are necessary to implement these provisions.

Tiering:
Was tiering applied? No. Tiering was not applied because only one subject is addressed. Therefore, tiering is not appropriate.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 8:020. Policies and procedures for local health department operations.

RELATES TO: KRS Chapter 212
PURSUANT TO: KRS 194.050, 211.090, 211.170, 211.180, 213.410
NECESSITY AND FUNCTION: KRS 211.170 directs the Cabinet for Human Resources to establish policies governing the activities of local health departments. This regulation adopts various manuals setting policies and standards for health departments.

Section 1. Local Health Policy Manual. The policies set forth in the July 15 [February 15], 1986, edition of the "Local Health Policy Manual" governing the maintenance and operation of local health departments are hereby adopted by reference.

Section 2. Financial Management Manual. The policies set forth in the July 15 [June 15], 1986, edition of the "Financial Management Manual" governing the operation of the financial management systems used by local health departments are hereby adopted by reference.

Section 3. Patient Services Reporting System Manual. The policies set forth in the May 1, 1984, edition of the "Patient Services Reporting System Manual" governing the collection of patient health/medical services delivered by local health departments are hereby adopted by reference.

Section 4. Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky. The policies and procedures set forth in the May 1, 1984, edition of the "Medical Records System Policy and Procedure Manual for Local Health Departments in Kentucky" governing the development and maintenance of medical records in local health departments are hereby adopted by reference.

Section 5. Planning Manual for Local Health Departments. The policies set forth in the July, 1986, edition of the "Planning Manual for Local Health Departments" governing the annual program planning process and procedures of local health departments are hereby adopted by reference.

Section 6. Standards Manual for Local Health Departments. The policies set forth in the July, 1986, edition of the "Standards Manual for Local Health Departments" governing the programmatic operations of local health departments are hereby adopted by reference.

Section 7. Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report. The policies set forth in the September, 1982, edition of the "Local Health Department Environmental Data System Operational Procedures for Weekly Environmental Activity Report, Sanitation Programs Information Formulator, and Local Health Annual Data Report" are hereby adopted by reference.

Section 8. On-Line Environmental Health Management Information System. The policies set forth in the February 14, 1984, edition of the "On-Line Environmental Health Management Information System" manual are hereby adopted by reference.

Section 9. MCH Maternity Manual. The policies set forth in the July 1, 1985, edition of the "MCH Maternity Manual" governing the operation of the prenatal program conducted by local health departments are hereby adopted by reference.

Section 10. Sudden Infant Death Syndrome Program. The policies set forth in the January 1, 1985, edition of the "Sudden Infant Death Syndrome Program" manual governing the operation of the Sudden Infant Death Syndrome Program conducted by local health departments are hereby adopted by reference.

Section 11. Standards for Genetic Disease Testing, Counseling and Education Services Program. The policies set forth in the October 15, 1985, edition of the "Standards for Genetic Disease Testing, Counseling and Education Services Program" manual governing the operation of genetic disease testing and counseling clinics conducted by local health departments

are hereby adopted by reference.

Section 12. Standards for Regional Pediatric Clinics. The policies set forth in the October 15, 1985, edition of the "Standards for Regional Pediatric Clinics" manual governing the operation of regional pediatric programs conducted by local health departments are hereby adopted by reference.

Section 13. Standards for Preventive Health Care in Children. The policies set forth in the December 15, 1985, edition of the "Standards for Preventive Health Care in Children" manual governing the operation of well child programs conducted by local health departments are hereby adopted by reference.

Section 14. Standards for Child Restraint Program. The policy set forth in the January 1, 1986, edition of the "Standards for the Child Restraint Program" manual governing the operation of safety seat loan programs conducted by local health departments are hereby adopted by reference.

Section 15. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 16. Summary of Amendment. (1) In relation to Section 1 relating to the Local Health Policy Manual, the Manual is being revised effective July 15, 1986 as follows:

(a) Local Health Policy 300-7 is being revised to provide for an exception to the limitation imposed on the phrase "until their successors are appointed" in those instances where a qualified successor is unavailable.

(b) LHP Manual 600-20 "Home Health Services Program" is being deleted. The policies and procedures contained in this LHP are either obsolete or duplicate information promulgated in the Home Health Standards Section of the "Standards Manual for Local Health Departments."

(2) In relation to Section 2 relating to the Financial Management Manual, strike page 85 dated November 15, 1985 and substitute in lieu thereof a new page 85 dated July 15, 1986. This revision updates the Uniform Percentage Payment Schedule to correspond to federal poverty income guidelines. [2 relating to the Financial Management Manual, the "Accounting, Auditing and Financial Reporting Policies and Procedures Section" is being revised by adding OMB Circular A-128 "Audits of State and Local Governments", to the audit standards that local health departments must meet. With this change, the scope of the audit will be expanded to require additional work in internal systems, compliance testing and additional reporting for federally assisted programs conducted by local health departments.]

C. HERNANDEZ, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 27, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Acting General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS
(Section 1, LHP 300-7 Board of Health)

Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: 47 Local Health Departments.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

REGULATORY IMPACT ANALYSIS
(Section 1, LHP 600-20 Home Health)

Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: 19 Local Health Departments.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The referenced policy is obsolete as the Home Health Policies and Procedures are now included in the Home Health Standards Section of the "Standards Manual for local Health Department."

Tiering:
Was tiering applied? No. Not applicable.

REGULATORY IMPACT ANALYSIS
(Section 2, Financial Management Manual)

Agency Contact Person: Phillip R. Spangler
(1) Type and number of entities affected: 49 local health departments.
(a) Direct and indirect costs or savings to those affected: Nominal additional cost to health departments. Raising the poverty level designation will allow additional clients to be eligible for services at zero or reduced cost.
1. First year: Nominal additional cost.
2. Continuing costs or savings: Nominal additional cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No additional.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Proposed Amendment)

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

RELATES TO: KRS Chapter 210
PURSUANT TO: KRS 210.010
NECESSITY AND FUNCTION: KRS 210.010 directs the Secretary of the Cabinet for Human Resources to prescribe regulations for the institutions under the control of the cabinet. The function of this regulation is to adopt policies and procedures for such institutions.

Section 1. Oakwood Policy Manual. The policies set forth in the February 15, 1986, edition of the "Oakwood Policy Manual" consisting of three (3) volumes relating to the operation of Oakwood ICF-MR Facility are hereby adopted by reference.

Section 2. Hazelwood Policy Manual. The policies and procedures set forth in the May 15, 1986, edition of the "Hazelwood Policy Manual" consisting of two (2) volumes relating to the operation of Hazelwood ICF-MR Facility are hereby adopted by reference.

Section 3. Central State Hospital ICF-MR Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Central State Hospital ICF-MR Policy Manual" consisting of two (2) volumes relating to the operation of Central State Hospital ICF-MR Facility are hereby adopted by reference.

Section 4. Eastern State Hospital Policy Manual. The policies and procedures set forth in the July 15 [April 15], 1986, edition of the "Eastern State Hospital Policy Manual" consisting of twenty-one (21) volumes relating to the operation of Eastern State Hospital Facility are hereby adopted by reference.

Section 5. Central State Hospital Policy Manual. The policies and procedures set forth in the July 15 [May 15], 1986, edition of the "Central State Hospital Policy Manual" consisting of nineteen (19) volumes relating to the operation of Central State Hospital Facility are hereby adopted by reference.

Section 6. Western State Hospital Policy Manual. The policies and procedures set forth in the April 15, 1986, edition of the "Western State Hospital Policy Manual" consisting of thirty-two (32) volumes relating to the operation of Western State Hospital Facility are hereby adopted by reference.

Section 7. Glasgow ICF Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Glasgow ICF Policy Manual" consisting of twelve (12) volumes relating to the operation of Glasgow ICF Facility are hereby adopted by reference.

Section 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the March 15, 1986, edition of the "Western State Hospital ICF Policy Manual" consisting of nine (9) volumes relating to the operation of Western State Hospital ICF Facility are hereby adopted by reference.

Section 9. Volta Policy Manual. The policies and procedures set forth in the September 1, 1985, edition of the "Volta Policy Manual" consisting of one (1) volume relating to the operation of Volta Facility are hereby adopted by reference.

Section 10. Kentucky Correctional Psychiatric Center Policy Manual. The policies and procedures set forth in the April 15, 1986, edition of the "Kentucky Correctional Psychiatric Center Policy Manual" consisting of thirteen (13) volumes relating to the operation of Kentucky Correctional Psychiatric Center Facility are hereby adopted by reference.

Section 11. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 12. Summary of Amendments.

Section 4 is revised as follows:

EASTERN STATE HOSPITAL POLICY MANUAL

D1, Section II P. 25 & 25A — This revised policy concerns patient's personal clothing.

D1, Section II P. 12 & 12A — Policy revised to delete the procedure calling for immediate notification of the Hospital Director.

D9 — Chaplaincy Service. Policy revised to add Quality Assurance Plan.

D10 — Revisions in the Radiology Policy and Procedure: The following are the additions to Page 3 under number 1 will be added the following wording: The Chief of the Staff's function shall be: (a) Establishing an effective relationship with the medical staff, administration and other services. (b) Developing and approving policies and procedures which shall be reviewed annually, revised as needed and dated. (c) Verifying the qualifications and capabilities of radiologic technician. (d) Developing safety rules in accordance with the hospital Safety Committee. (e) Monitoring the evaluation of the quality and appropriateness on findings. (f) Advising the medical staff as to the treatment needed. (g) Maintaining a quality control program to minimize the unnecessary duplication of radiologic service and to maximize the quality of diagnostic information available.
Number 4, the paragraph will be number A and an additional paragraph numbered B will be added: The radiologic technicians will further their knowledge and skills thru on-the-job training, attendance at workshops, local, regional or national society meetings. The radiologic technician will document program content and extent of participation. Page 7 will be a change in number 1: The physician in charge will review the radiologist's authenticated report for each examination performed and filed in the patient's medical record preferably within 72 hours.
Page 8 - 4 will read as follows: Radiologic examination or radiologic treatment done is to be entered in the consultation form if performed outside the hospital. The consultation form will be reviewed by the admitting physician when the forms come back and is made a part of the patient's record. Number 5 will read as: CT scan may be obtained as above under number 1. On Page 10 number 6 will read as follows: No radiologic exposure is done to gonads or unborn fetuses. If x-ray is needed for pregnant patients a protective shield shall be applied. Page 14 number 13 will read as follows: Radiation probation survey will be done when radiologic equipment is initially installed, altered significantly or relocated. Number 14 will read as follows: The radiation safety officer shall be responsible for ensuring that requirements by the 902 KAR 100 and 1 Ky.R. 411, eff. 2/5/75 are being effectively performed. Page 16 - Policy: Administration of Diagnostic Agents was completely revised. Page 23 - will be the policy on sufficient space, equipment and supplies for the performance of Radiology Services.

D16 — Policy and Procedure Manual for Staff Development and Training - replaces the previous manual.

Section 5 is revised as follows:

CENTRAL STATE HOSPITAL POLICY MANUAL

E1, Section HH Number 7.10 No. 10 Paragraph 2 — Licensure cited Central State Hospital because our policy and procedure on Human Rights was not consistent with the requirements of 902 KAR Chapter 12. This revision now brings Central State Hospital into compliance on that issue.

E1, Section HH Number 7.20 — A policy revision placing committee appointments under the Hospital Director instead of the Clinical Director.

E1, Section HH Number 1.40 — Since Central State Hospital no longer uses the "red" band buddy system as a patient privilege status, this administrative regulation is amended to reflect that change. This revision in the policy does not affect staff utilization of time or resources.

[Section 2 is revised as follows:

HAZELWOOD POLICY MANUAL

87-3-2 #15 — Volunteer Advisory Council
This is a newly established policy in order to develop a more extensive volunteer program, and to involve and educate members of the community as to the mission and function of Hazelwood.

87-3-3 #19 — Earthquake Emergency Procedure
This is a newly established policy in order to increase the facility's preparedness for an emergency condition involving earthquake.

87-6-4 #2 — Work Activity Advisory Council
This is a newly established policy in order to increase the contacts the Work Activity Center has for obtaining work, and to educate the community as to the mission and purpose of Hazelwood and its Work Activities Center.

87-9-2 29B — Affirmative Action
This is a revision and it more clearly and directly falls in

line with the Affirmative Action Plan for the Division of Institutional Care.

87-5-7 6D 24-Hour Census Report
This is a revision which more simply and clearly identifies what the current practice of census reporting shall be.

Section 5 is revised as follows:

CENTRAL STATE HOSPITAL POLICY MANUAL

Section B - Content Page - revised page - Added B 25 to the content page.

Section B No. 25 - new policy - this policy is to formally define the role of the Unit Manager's Unit to assist in meeting JCAH standards for therapeutic environmental monitoring. No extra money or employees are needed to implement this policy.

Section E No. 3 - revised only the first page - reflects an addition to Section #2 and will require no additional staff and only minimal additional expense.

Section E No. 7 - new policy - be accepted to meet JCAH standards. No extra monies or employees are needed.

Section J No. 1 - revised - a specific Quality Assurance Plan for Physical Therapy to meet JCAH standards. No extra monies are needed.

Section L No. 4 - new - a specific Quality Assurance Plan for Social Services to meet JCAH standards. This policy outlines the functions of the committee. No extra monies are needed.

Section N No. 1 - revised - this policy has been updated and corrected by the District Manager. No increase in time or money spent will be necessitated by this revision.

Section T No. 1 - revised - last sentence in the first paragraph of procedure as no services are now provided in the general area. No extra monies are needed.

Section X Nos. 1, 2, 7, 12, 13, & 15 - revised policies - revisions were made on these policies to be in compliance with JCAH. No extra monies or employees are needed.

Section Y No. 1 - revised - Item No. 7 was added under the Procedure Section to be in compliance with Joint Commission. No increase in expenses or work load on the personnel.

Section Z No. 2 - revised - to assure quality monitoring of patient care. The change will not impact on cost or expenditures.

Section BB No. 1 - revised - three new paragraphs added under the procedure section to be in compliance with JCAH. No extra monies will be needed.

Section HH No. 7.10 - revised - addition was added to Section 6 under the procedure to meet JCAH standards and no increase in expenditure or time is expected.

Section HH No. 9.55 - revised - to meet JCAH standards and to help administration monitor the therapeutic environment. No extra monies or employees will be needed.

Section HH No. 9.55A - new - to meet JCAH standards and to help administration monitor the therapeutic environment and no extra monies or employees will be needed.

Section HH No. 10.56 - revised - needed a more consistent method of identifying patients with infectious disease. This proposed policy attempts to simplify the process. No extra monies are needed.

Section HH No. 10.95 - new - this policy was written to meet JCAH standards and to give guidance to physicians and nurses. No extra monies will be needed.

E-2 - NURSING MANUAL

Section G - No.7.10 - Clothing, Grooming & Personal Hygiene
To meet JCAH standards and to help administration monitor the therapeutic environment. No extra monies or employees will be needed.

Section G - No. 7.11 - Recreational Supplies and Equipment
To meet JCAH standards and to help administration monitor the therapeutic environment. No extra monies or employees will be needed.

E-3 - ACTIVITIES THERAPY

Section M - No. 3 - Quality Assurance
Revised policy in order for it to more closely state the information JCAH Standards allude to. The revision does not require extra staff to implement and no increase in cost will be incurred.

E-11 - PHARMACY MANUAL

Updated the manual to be in compliance with JCAH. These changes will not increase the expenditures or increase workload on the personnel.

Addition to No. 1
7. Up-to-date pharmaceutical reference material concerning drugs will be kept in the Pharmacy Information Center required by Kentucky Board of Pharmacy.
   a. Remington Pharmaceutical Sciences
   b. USP-D1
   c. Facts and Comparisons
   d. Drug Interaction Facts

Addition to No. 7
12. Pharmacist will review patient's profile regularly.

Change on No. 10 - Only changed date.

Addition to No. 11 - Add Sample Form for Adverse Drug Reaction Report

Addition to No. 14
8. Emergency Carts and Emergency Boxes are all inspected for contents and out-dated drugs.

9. Disinfectants and drugs for external use shall be stored separately from internal and injectable drugs.
10. Drugs requiring refrigeration shall be checked to assure proper storage.
11. Drugs shall be checked for expiration dates and removed if not in date.

Made new form for DRUG CABINET INSPECTION REPORT which includes three new check items. They are listed below.

Emergency Carts, Emergency Boxes, Lighting

Addition to No. 17
8. Emergency Carts and Boxes shall be inspected after use and monthly for out-dated drugs and deteriorated items.

CRASH CART MEDICATIONS list - only changed date.

Up-date List No. 19
Authorized Prescribers Medication Dispensed List - Up-Date

Up-date List No. 20
Clinical Staff who are authorized to Administer Medications List - Up-Date

Addition to No. 21
e. Telephone orders shall be accepted only from physicians on the list of authorized prescribers.

DENNIS D. BOYD, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 3, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Acting General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild
(1) Type and number of entities affected: This regulation with the attached reference material is the on-going policy and procedure manual of the state facilities for the treatment of patients with mental illness and mental retardation. These facilities function with 2,880 staff members serving 1,850 residents.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: This regulation usually does not affect the fiscal operation of these state facilities significantly. It affects the care and treatment of patients, compliance with JCAH standards, and Kentucky licensure regulations. The work environment of the staff is frequently the subject of this regulation also, along with the orderly management of the various programs.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Present procedure not previously adopted by regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.107, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105, Executive Order 86-366
NECESSITY AND FUNCTION: KRS 216B.040 mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. Executive Order 86-366 transferred the authority to regulate health services and health facilities from the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to the Office of the Inspector General. This regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Scope of Operations and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 2. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.
(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.
(3) "Registered records administrator" means a

person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietitian" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "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) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "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 must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(12) "Two-step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsiblity, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed corsent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for

recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the post-discharge care of the patient. All pertinent information concerning post-discharge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within fifteen (15) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsbilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

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/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for pre-employment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently

receiving or has completed one (1) year of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually within two (2) weeks before or after the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for one (1) year unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, social security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physicial plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be current written infection control measures, including:

1. Policies concerning the admission and isolation of patients with specific or suspected infectious diseases, protective isolation of appropriate patients and protective routine for personnel and visitors;
2. Written procedures for the bacteriological testing of all areas of possible infection. Results of all testing shall be recorded and reported to the infection control committee;
3. The method of control used in relation to the sterilization of supplies and water; and
4. Policies for the protection of patients from employees who have a communicable disease.

(e) The hospital shall provide inservice education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.
2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.
3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.
4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.
5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.
6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid containers immediately after use. After use, all needles shall also be rendered unusable. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(h) The hospital shall establish a written policy for the handling and disposal of all infectious and pathological waste. Any incinerator used for the disposal of waste shall be incompliance with 401 KAR 59:020 and 401 KAR 61:010.

1. All unpreserved tissue specimens from surgical or necropsy procedures shall be

incinerated, on site or off site.

2. The following waste shall be sterilized before disposal or be disposed of by incineration if they are conbustible:

a. Dressings and materials from open or contaminated wounds;

b. Waste materials and disposable linens from isolation rooms;

c. Culture plates;

d. Test tubes;

e. Sputum cups; and

f. Contaminated sponges and swabs.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas ventilated to the exterior of the buildings; this air shall not be allowed to recirculate into the facility.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other resaon. 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 shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist 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 anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Physician's, or dentist's when applicable, progress notes and nurses' observations;

11. Record of temperature, pulse and respiration;

12. 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;

13. Discharge summary, including condition of patient on discharge, and date of discharge; [and]

14. In case of death, autopsy findings, if performed; and

15. Written protocols for organ procurement.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

(d) No patient with impending or declared brain death and/or cardiopulmonary death should be considered as a potential organ 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/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing care plans, and nursing care procedures.

1. Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physican, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary. the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietitian or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be

employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage. handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. 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 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their inservice training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgury 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 desingated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficieny testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and dispostion of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for futher testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review commitee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, 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 dispostion of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted

Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall ap-ply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(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/rehabilitation service.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical

records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical work-up in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a pre-anesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a post-anesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The post-anesthetic follow-up note shall be written within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does

not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered before the infant is removed from the delivery room.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or ''room-in'' with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller

(1) Type and number of entities affected: All hospitals.

(a) Direct and indirect costs or savings to those affected: Minimal.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Documentation of organ procurement program in hospital protocols and affected patient's medical record.

(2) Effects on the promulgating administrative body: Indirect costs associated with increased surveyor time.

(a) Direct and indirect costs or savings: See above.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This program was mandated as a condition for licensure by HB 5 now codified as KRS 311.241.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This is a licensure standard. All hopsitals will have to meet the same standards.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: The National Organ Transplant Act (PL 98-507) makes it unlawful for federally unrecognized entities to purchase or sell human organs. The state's two organ procurement agencies (University of Louisville and University of Kentucky) have been officially designated by the Health Care Financing Administration. The proposed amendment to the hospital services regulation refers only to officially designated agencies.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? Not applicable - The amendment only implements KRS 311.241 and does not exceed any federal requirement.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: Not applicable (see above).

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure
(Proposed Amendment)

902 KAR 20:026. Operations and services; skilled nursing facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of skilled nursing facilities and the services to be provided by skilled nursing facilities.

Section 1. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 2. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(2) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.
(3) "Facility" means a skilled nursing facility.
(4) "License" means an authorization issued by the Board for the purpose of operating a skilled nursing facility and offering skilled nursing services.
(5) "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.
(6) "Speech pathologist" means a person who:
(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or
(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.
(9) "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council or Social Work Education.

(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(11) "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.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Personnel policies, practices and procedures that support sound patient care.

(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dieticians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.
2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review; and
6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious ill-ness, visiting hours, type of diets offered and services rendered.

(6) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(7) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When a transfer is to another level of care within the facility, the complete patient record or a current summary thereof shall be transferred with the patient.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems

requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis Testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing inservice education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multi-disciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in

subparagraph 7a of Section 3(8)(d) may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for non-professional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(10) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. The physician's orders for medication, diet, and therapeutic services. These shall be dated and signed by the physician.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the ninetieth day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with

one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of non-nursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribed specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

a. Services in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has e pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaulation pursuant to Section 4(1)(b). The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314). Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

4. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No

form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

5. Communicable diseases.

a. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

(i) Staff of facility have completed a training program approved by the cabinet.

(ii) The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

(iii) The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

b. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: Patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social

services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to

KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or beding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller

(1) Type and number of entities affected: Would impact four (4) long term care licensure categories.

(a) Direct and indirect costs or savings to those affected: Minimal

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Long term care facilities admitting AIDS victims would be required to meet four stipulations established by the cabinet.

(2) Effects on the promulgating administrative body: The Cabinet for Human Resources would indirectly bear some of the costs through the Medicaid Program.

(a) Direct and indirect costs or savings: See above.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative was to maintain the status quo, thus, not allowing AIDS victims to be admitted to long term care facilities.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: No

Tiering:
Was tiering applied? No. These are licensure standards. All services are required to meet the same requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure
(Proposed Amendment)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of personal care homes and the services to be provided by personal care homes.

Section 1. Scope of Operations and Services. Personal care homes are establishments with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services and social and recreational activities. Residents in a personal care home must be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory, and are able to manage most of the activities of daily living. Persons who are nonambulatory or nonmobile shall not be eligible for residence in a personal care home.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).
(2) "Activities services" means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.
(3) "Administrator" means a person who:
(a) Has sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator must: be literate; be a high school graduate or have passed the General Education Development Test; be twenty-one (21) years of age or older; or
(b) Is licensed as a nursing home administrator as provided by KRS 216A.080.
(4) "Ambulatory" means able to walk without assistance.
(5) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.
(6) "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services.
(7) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or a wheelchair and capable of independent bed-to-chair transfer or bed-to-chair transfer with minimal assistance.
(8) "Nonambulatory" means unable to walk without assistance.
(9) "Nonmobile" means unable to move from place to place.
(10) "Qualified dietician or nutritionist" means a person who:
(a) Has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) Has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.
(11) "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.
(12) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(13) "Residential care" means services which include but are not limited to: room accomodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens.
(14) "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.

Section 3. Administration and Operation. (1) Licensee.
(a) The licensee shall be legally responsible for the operation of the personal care home and for compliance with federal, state and local laws and regulations pertaining to the operation

of the home.

(b) The licensee shall establish policies for the administration and operation of the service.

(2) Administrator. All personal care facilities shall have an administrator who shall be responsible for the operation of the facility and shall delegate such responsibility in his or her absence.

(3) Admission.

(a) Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) No personal care home may care or be responsible for the care of more residents than the capacity indicated on the license, regardless of where housed.

(c) Upon admission the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) Upon admission each resident shall have a complete medical evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done within fourteen (14) days prior to admission).

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult and child protection. Personal care homes shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(6) Transfer procedures and agreements.

(a) Personal care homes shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of inpatient care not provided by the personal care home. Any facility which does not have a transfer agreement in effect but has attempted in good faith to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) The administrator shall initiate transfer through the resident's physician, and/or appropriate agencies when the resident's condition is not within the scope of services of a personal care home.

(c) In the event of transfer to another health care facility a current summary of the resident's medical record shall accompany the resident. When a transfer is to another level of care within the same facility a copy of the resident's record or current summary thereof shall accompany the resident.

(7) Tuberculosis Testing. All employees and residents shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(8) Personnel.

(a) Current employee records shall be maintained and shall include a record of each employee's training and experience, evidence of current licensure, registration or certification where required by law, health records and evaluation of performance, along with employee's name, address and social security number.

(b) All employees must be of an age in conformity with state laws.

(c) Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(d) All dietary employees must wear hairnets.

(e) Inservice training. All personal care home employees shall receive inservice training to correspond with the duties of their respective jobs. Documentation of inservice training shall be maintained in the employee's record and shall include: who gave the training, date and period of time training was given and a summary of what the training consisted of. Inservice training shall include but not be limited to the following:

1. Policies of the facility in regard to the performance of their duties;
2. Services provided by the facility;
3. Recordkeeping procedures;
4. Procedures for the reporting of cases of adult and child abuse, neglect or exploitation to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335;
5. Patient rights as provided for in KRS 216.510 to 216.525;
6. Methods of assisting patients to achieve maximum abilities in activities of daily living;
7. Procedures for the proper application of physical restraints;
8. Procedures for maintaining a clean, healthful and pleasant environment;
9. The aging process;
10. The emotional problems of illness;
11. Use of medication; and
12. Therapeutic diets.

(f) Staffing requirements.

1. The number of personnel required shall be based on: the number of patients; amount and kind of personal care, supervision, and program needed to meet the needs of the residents as determined by the definitions of care and services required in this regulation.

2. If the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. The administrator shall designate a person for each of the following areas who will be primarily responsible for the coordination and provisions of services (personnel may be required to perform combined duties):

a. Recordkeeping;

b. Basic health and health related services; and

c. Activity services.

4. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

5. One (1) attendant shall be awake and on

duty on each floor in the facility at all times.

(9) Medical records. The person in charge of medical records shall assure that a complete medical record shall be kept for each resident with all entries current, dated and signed. Entries should be made in ink, ballpoint, or typed. Each record shall include the following:

(a) Identification information, including:

1. Resident's name;
2. Social Security, Medicare and Medical Assistance identification number (if appropriate);
3. Marital status;
4. Birthdate;
5. Age;
6. Sex;
7. Home address;
8. Religion and personal clergyman, if any (with consent of resident);
9. Attending physician, dentist and podiatrist, if any; address and phone number for each one;
10. Next of kin and/or responsible person, address and telephone number;
11. Date of admission and discharge;
12. In the event of transfer, a copy of the summary of resident's records; and
13. Monthly recording of the resident's weight.

(b) If admitted from another facility a discharge summary or transfer summary.

(c) Admitting medical evaluation.

(d) Physician's report on annual medical evaluation of the resident.

(e) Physician progress notes indicating changes in resident's condition, at time of each visit by the physician and consultant.

(f) Physician orders for medication or therapeutic services.

(g) Nurses' or staff notes indicating changes in resident's condition as they occur.

(h) Reports of accidents or acute illnesses of any resident.

(i) Reports of social services, dental, laboratory, x-ray and special reports of consultants or therapists when the resident receives these services.

(j) Medication and treatment sheets including all medications, treatments and special procedures performed indicating date and time. Entries shall be initialed by the personnel rendering treatment or administering medication.

(k) Reports of the use of physical restraints, the procedures used, and the checks and releases of physical restraints.

(l) A record of resident's discharge destination.

(10) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years, or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Basic health and health related services. All personal care homes shall provide basic health and health related services including: continuous supervision and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self administration of medications, storage and control of medications, when necessary, and making arrangements for obtaining therapeutic services ordered by the resident's physician which are not available in the facility. All personal care homes shall meet the following requirements relating to the provision of basic health and health related services:

(a) The person in charge of the facility shall be responsible for obtaining medical care by a licensed physician promptly in cases of accident or acute illness of any resident. Such instances shall be recorded in the resident's medical record.

(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed physician. Administration of all medications and provisions of therapeutic services shall be recorded in the resident's medical record.

(c) If orders are received by telephone from a physician, the order shall be recorded on the individual's medical record and signed by the physician within fourteen (14) days.

(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator, and any staff member who may have been witness to the incident. The report shall be filed in an incident file.

(e) Controlled substances. No home shall keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a physician. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the resident; the date, time, kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the resident shall be destroyed in accordance with KRS 218A.230, or CFR 21-1307.21, or sent by registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(f) All medicines must be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. All medicines kept by the home shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration must be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use must be stored separately from those administered by mouth and injection. Provisions must also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations.

(g) If a resident manifests persistent behavior that may require psychiatric treatment,

the resident's physician shall be notified in order to evaluate and direct the resident's care. If the resident's condition does not improve enough for his continued stay in a personal care facility, the physician shall initiate transfer of the resident to an appropriate facility as soon as possible.

(h) Use of restraints or protective devices. No form of restraints or protective devices shall be used except under written orders of the attending physician.

1. Protective devices. Protective devices may be used to protect the resident from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the resident the greatest possible degree of mobility. In no case shall a locking device be used.

2. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the resident's record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

3. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(i) Special purpose areas for the protection or confinement of a resident shall not be permitted unless approved in writing by the Division of Licensure and Regulation of the Cabinet of Human Resources with specification of use of the area.

(j) Each resident shall have an annual medical evaluation by a physician. The results of this evaluation shall be recorded in the resident's medical record.

(k) Communicable diseases.

1. No personal care home shall knowingly admit a person suffering from a communicable disease which is reportable to the health department, except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

a. Staff of facility have completed a training program approved by the cabinet.

b. The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

c. The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

2. If, after admission, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.

(2) Residential care services. All personal care homes shall provide residential care services to all residents including: room accommodations, housekeeping and maintenance services, and dietary services. All personal care homes shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a bed equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the residents comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necesary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The home shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors and a night light.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

(b) Housekeeping and maintenance services.

1. The home shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen should be on hand at all times. Soiled clothing and linens shall receive immediate attention and should not be allowed to accumulate. Clothing or bedding used by one (1) resident shall not be used by another until it has been laundered or dry cleaned.

3. Laundering of resident's normal personal clothing and bed linens. Resident's personal clothing and bed linens shall be laundered by the home as often as is necessary. Resident's personal clothing shall be laundered by the home unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident-owner and returned to the correct resident.

4. Safety. The home shall take appropriate precautions to insure safety of residents, visitors and employees.

5. Maintenance. The premises shall be well kept and in good repair. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds

are well kept and the exterior of the building and including the sidewalk, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. The compounds shall be stored under lock.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets, and the designated person responsible for food services is not a qualified dietitian or nutritionist, consultation by a qualified dietitian or qualified nutritionist shall be provided.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition. Nutrition needs of residents shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and menus shall be kept on file for thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be attractively served at the proper temperatures and in a form to meet individual needs. A file of tested recipes, adjusted to appropriate yield, shall be maintained. Food shall be cut, chopped, or ground to meet individual needs. If a resident refuses food served, substitutes shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

f. Ice water must be readily available to the residents at all times.

5. Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(3) Personal care services. All personal care homes shall provide services to assist residents to achieve and maintain good personal hygiene including the level of assistance necessary with:

(a) Washing and bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with washing and bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as towels, brushes and combs shall not be used in common.

(b) Shaving.

(c) Cleaning and trimming of fingernails and toenails.

(d) Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

(e) Washing, grooming, and cutting of hair.

(4) Activity services.

(a) All personal care homes shall provide social and recreational activities to: stimulate physical and mental abilities to the fullest extent; encourage and develop a sense of usefulness and self respect; prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age, be of sufficient variety that they meet the needs of the various types of residents in the home.

(b) All personal care homes shall meet the following requirements relating to the provision of activity services:

1. Staff. A person designated by the administrator shall be responsible for the activity program. (Volunteer groups may be enlisted to assist with carrying out the activities program.)

2. There shall be a planned activity period each day. The schedule shall be current and posted.

3. The program shall be planned for group and individual activities, both within and outside of the facility.

4. The person responsible for activities shall maintain a current list of residents on which precautions are noted regarding a resident's condition that might restrict or modify his participation in the program.

5. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.

6. The facility shall provide supplies and equipment for the activities program.

7. Reading materials, radios, games and TV sets shall be provided for the residents.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.
PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will

be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller
(1) Type and number of entities affected: Would impact four long term care licensure categories.
(a) Direct and indirect costs or savings to those affected: Minimal
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Long term care facilities admitting AIDS victims would be required to meet four stipulations established by the cabinet.
(2) Effects on the promulgating administrative body: The Cabinet for Human Resources would indirectly bear some of the costs through the Medicaid Program.
(a) Direct and indirect costs or savings: See above.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative was to maintain the status quo, thus, not allowing AIDS victims to be admitted to long term care facilities.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: No

Tiering:
Was tiering applied? No. These are licensure standards. All services are required to meet the same requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure
(Proposed Amendment)

902 KAR 20:048. Operations and services; nursing homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of existing nursing homes and the services to be provided by existing nursing homes. This regulation does not address the establishment of new nursing homes.

Section 1. Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).
(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.
(4) "Facility" means a nursing home facility.
(5) "License" means an authorization issued by the Board for the purpose of operating a nursing home and offering nursing home services.
(6) "PRN medications" means medications administered as needed.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(9) "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.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.
(2) Administrator.
(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.
(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the

needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a variety of medical conditions and require medical services, continuous medical services, and inpatient care but do not currently require inpatient hospital services. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience,

evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

7. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

8. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

9. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multi-disciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subparagraph 9a of Section 3(9)(c) may be assigned duties appropriate to their training and experience.

10. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

11. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

12. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall

conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the sixtieth day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of non-nursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

4. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patients preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which include:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed

medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act (KRS Chapter 314) or by personnel who have completed a state approved training program. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

5. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

6. Communicable diseases.

a. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his

tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

(i) Staff of facility have completed a training program approved by the cabinet.

(ii) The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

(iii) The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

b. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(11) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall

be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. .Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.

PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller

(1) Type and number of entities affected: Would impact four long term care licensure categories.

(a) Direct and indirect costs or savings to those affected: Minimal

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Long term care facilities admitting AIDS victims would be required to meet four stipulations established by the cabinet.

(2) Effects on the promulgating administrative body: The Cabinet for Human Resources would indirectly bear some of the costs through the Medicaid Program.

(a) Direct and indirect costs or savings: See above.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal increase.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative was to maintain the status quo, thus, not allowing AIDS victims to be admitted to long term care facilities.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: No

Tiering:
Was tiering applied? No. These are licensure standards. All services are required to meet the same requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure
(Proposed Amendment)

902 KAR 20:051. Operation and services; intermediate care.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of intermediate care facilities and the services to be provided by intermediate care facilities.

Section 1. Scope of Operations and Services. Intermediate care facilities are establishments with permanent facilities including inpatient beds. Services provided include twenty-four (24) hour supervision of patients, services including physician, nursing, pharmaceutical, personal care, activities and residential services. Patients in an intermediate care facility must have a physical or mental condition that requires intermittent nursing services along with continuous supervision of the activities of daily living.

Section 2. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(4) "Facility" means an intermediate care facility.

(5) "License" means an authorization issued by the Board for the purpose of operating an intermediate care facility and offering intermediate care services.

(6) "PRN medications" means medications administered as needed.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(9) "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.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence. The administrator shall not be the nursing services supervisor in a facility with more than sixty (60) beds.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Department for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. The facility shall admit only persons who have a physical or mental condition which requires intermittent nursing services and continuous supervision of activities of daily living. The facility shall

not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within seventy-two (72) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physicial examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term facility if done within fourteen (14) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious ill-ness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis Testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training in rehabilitative nursing. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing care.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other

patient care services.

g. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

h. Assuring that a written monthly assessment of the patient's general condition is completed.

i. Assuring that the establishment, review and modification of nursing care plans for each patient is done by licensed nursing personnel.

j. Assuring that all medications are administered by licensed personnel or by other personnel who have completed a state-approved training program.

k. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

8. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

9. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within fourteen (14) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) General requirements.

(a) Patient care equipment. There shall be a sufficient quantity of patient care equipment of satisfactory design and in good condition to carry out established patient care procedures. The equipment shall include:

1. Wheelchairs with brakes;

2. Walkers;

3. Bedside rails;

4. Bedpans and urinals (permanent or disposable);

5. Emesis basins and wash basins (permanent or disposable);

6. Footstools;

7. Bedside commodes;

8. Foot cradles;

9. Foot boards;

10. Under-the-mattress bed boards;

11. Trapeze frames;

12. Transfer board; and

13. An autoclave for sterilization of nursing equipment and supplies or an equivalent alternate method of sterilization.

(b) Communicable diseases.

1. No patient shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease; provided, however, that a "facility" may admit persons having Acquired Immune Deficiency Syndrome (AIDS) provided that the following conditions are met:

a. Staff of facility have completed a training program approved by the cabinet.

b. The facility has developed strict written procedures and protocols for staff to follow in order to avoid exposure to blood or body fluids of the AIDS patient; and to follow if such an exposure occurs.

c. The facility must apprise the public and the residents of the facility, that AIDS patients are admissible to that facility; but identifying information on AIDS patients shall not be disclosed except as provided by law or regulation of the Cabinet for Human Resources.

2. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(c) Use of restraints or protective devices.

1. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care.

2. No form of restraints or protective devices shall be used except upon written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

(2) Physician services. All patients shall be under the medical supervision of a licensed physician. These services shall include:

(a) Physician's visit for medical evaluation as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical report.

(b) Physician services for medical emergencies available on a twenty-four (24) hour, seven (7) days-a-week basis.

(3) Nursing services. Nursing services shall include:

(a) The establishment of a nursing care plan for each patient. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals and nursing care needs;

(b) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative measures shall be practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measures shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

(c) Administration of medications including oral, rectal, hypodermic, and intramuscular;

(d) Written monthly assessment of the patient's general condition by licensed nursing personnel;

(e) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets;

(f) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(g) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(4) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky

Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing. Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or the pharmacist shall review each patient's medical profile monthly. Medications shall be reviewed at least quarterly by the attending or staff physician. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications shall be released to patients on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state-approved training program. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse.

a. The nursing station shall have items required for the proper administration of medications.

b. Medications prescribed for one (1) patient shall not be administered to any other patient.

c. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician and a predischarge program under the supervision of a licensed nurse.

d. Medication errors and drug reactions shall be immediately reported to the patient's physician and pharmacist and an entry thereof made in the patient's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

(5) Personal care services.

(a) All facilities shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(6) Dental services. The facility shall assist patients in obtaining dental services. Conditions necessitating dental services shall be noted and such dental procedures and services provided shall be recorded in the patient's record.

(7) Social services. The facility shall provide or arrange for social services as needed by the patient.

(a) Social services shall be integrated with other elements of the plan of care.

(b) A plan for such care shall be recorded in the patient's record and periodically evaluated in conjunction with the patient's total plan of care.

(c) Social services records shall be maintained as an integral part of case record maintained on each patient.

(8) Activities and therapeutic recreation.

(a) All facilities shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of symptoms

of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All facilities shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the facility, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. A living or recreation room and outdoor recreational space shall be provided for patients and their guests.

7. The facility shall provide supplies and equipment for the activities program.

8. Reading materials, radios, games and TV sets shall be provided for the patients.

9. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area of private consultation shall be made available.

10. The facility shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety.

(9) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(10) Residential care services. All facilities shall provide residential care services to all patients including: room accommodations, housekeeping and maintenance services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services.

(a) Room accommodations.

1. Each patient shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered by the facility as often as is necessary. Patients' personal clothing shall be laundered by the facility unless the patient or the patient's family accepts this responsibility. Patients capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Patient's personal clothing laundered by the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left-over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

Section 5. Separability. If any clause, sentence, paragraph, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, directly involved in the controversy in which the judgment was rendered.

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 7, 1986 at 3 p.m.
PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel,

Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller
(1) Type and number of entities affected: Would impact four long term care licensure categories.
(a) Direct and indirect costs or savings to those affected: Minimal
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Long term care facilities admitting AIDS victims would be required to meet four stipulations established by the cabinet.
(2) Effects on the promulgating administrative body: The Cabinet for Human Resources would indirectly bear some of the costs through the Medicaid Program.
(a) Direct and indirect costs or savings: See above.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative was to maintain the status quo, thus, not allowing AIDS victims to be admitted to long term care facilities.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: No

Tiering:
Was tiering applied? No. These are licensure standards. All services are required to meet the same requirements.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:260. Unemployment insurance procedures.

RELATES TO: KRS 341.005 through 341.990
PURSUANT TO: KRS 13A.100, 194.050(1), 341.115
NECESSITY AND FUNCTION: Title III of the Social Security Act authorizes the states to implement an unemployment insurance program. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the procedures required to administer the unemployment insurance program in accordance with applicable state and federal laws and regulations.

Section 1. In order to facilitate the administration of the unemployment insurance program as authorized by Title III of the Social Security Act and KRS Chapter 341, the following operating manuals are adopted by reference:
(1) Unemployment Insurance Local Office Manual as issued February, 1984 and last revised June 24 [May 8], 1986. This manual includes procedures: for requiring proper identification of persons filing claims for benefits; for taking and processing initial, additional, reactivated and continued claims for benefits; for assigning claimants to the appropriate group for the eligibility review program; for conducting the eligibity review program; for stopping and releasing payment of benefits; for entering claim history and benefit payment information into the data base; for taking and processing interstate claims, combined wage claims, claims by former federal employees and ex-servicemembers, and claims for extended benefits and federal supplemental compensation benefits; for conducting investigations and issuing determinations regarding a claimant's separation, ability to work, availability for work, active search for work, benefit entitlement, and deductions from benefits; for processing employers' protests to claims; for taking requests for reconsideration of monetary eligibility; for establishing benefit overpayments and initiating recovery or recoupment by processing partial payment agreements or issuing liens; for initiating action on lost or returned checks; for detecting and initiating recovery of fraudulent overpayments; for filing appeals to eligibility determinations; for reporting workload time spent; for compiling claims and nonmonetary determination statistics; and for ranking of local offices based on performance criteria.
(2) Unemployment Insurance Benefit Branch Procedures Manual issued May, 1982 and last revised March 7, 1986. This manual includes procedures for administering the payment of unemployment insurance benefits; for maintaining accounts for all benefit income and expenditures; for detecting, establishing and initiating recovery of benefit overpayments; for assigning benefit charges to employer accounts; for conducting a quality review of nonmonetary determinations affecting the payment of benefits; for processing unemployment claims for former federal employees, ex-servicemembers, combined wage claimants, interstate claims, claims for Disaster Unemployment Assistance, claims under the Trade Readjustment Act and claims under the Work Incentive Program; for reconsidering monetary rate determinations; for processing payment for lost or returned benefit checks; and for investigating potential fraud and recommendation of recovery action or criminal prosecution.
(3) Unemployment Insurance Tax Collection and Accounting Branch Manual issued November, 1982 and last revised May 1, 1986. This manual includes procedures: for setting up, transferring and cancelling employer contribution and reimbursement accounts; for collecting quarterly taxes from contributory employers and for billing reimbursing employers for benefits paid; for auditing quarterly wages

and tax reports by making adjustments, assessing additional payment and penalties and crediting tax overpayments; for adjusting wages if required when a reconsideration of monetary benefit eligibility is filed; and for collecting delinquent taxes by filing tax liens, recommending suits and temporary restraining orders, garnishing wages, filing claims in bankruptcy or against monies due to delinquent employers from state agencies.

(4) Unemployment Insurance Administrative Support Branch Manual issued December, 1983 and last revised November 9, 1984. This manual includes procedures: for maintaining files of benefit claims, employer records, appeals, and unemployment insurance commission orders; for maintaining mail security operations for all checks received by the division; for gathering statistics and conducting statistical studies; for verifying workload items for the budget process; for publishing statistical reports for the division and for general publication; for maintaining and distributing federal and state-released procedures; for maintaining all procedures manuals; for conducting the unemployment insurance quality appraisal; for training division personnel; for retaining and disposing of records; for providing data processing liaison services; for preparing state and federal budgets; for operating the Cost Model Management System; for maintaining the Cost Information System; for controlling forms control; and for monitoring purchases, expenditures and repairs.

(5) Unemployment Insurance Field Audit Manual issued February, 1984 and last revised January 11, 1985. This manual includes procedures for handling matters which cannot be handled directly or expediently by the central office tax branch, such as procedures: for locating employers; for conducting investigations of employers, and their payrolls and employment records; for determining an employer's status under the law; for assessing contributions and collecting delinquent contributions; for serving legal papers; for conducting property investigations; for auditing employer records; and for furnishing technical assistance to employers.

(6) Unemployment Insurance Director's Office Manual issued November 18, 1983, and last revised December 12, 1984. This manual includes procedures for operating the Fraud Investigations and Internal Security Unit such as procedures for: administering the unit; detecting fraud; prosecuting fraud cases; closing out fraud cases; preventing fraud; maintaining internal security; and conducting other investigations.

(7) Kentucky Unemployment Insurance Commission Administrative Branch Manual issued September 1, 1985. This manual includes procedures for the daily operations of the branch. Such procedures include staff duties and responsibilities, the review of cases, the conduct of hearings, the preparation of decisions and the proper handling of records and reports.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621 and in local unemployment insurance offices located throughout the state.

Section 3. Summary of Amendment. Unemployment Insurance Local Office Manual. (1) Chapter 2000 [8000], Initial Claims [Appeals], strike pages (2020-2020(2)) - (2020-2030) dated 3-5-86 [contents dated 10-30-85], and substitute in lieu thereof pages (2020-2020(2)) - (2020-2030) dated 6-5-86, which advises program 4T is no longer available on IMS. [contents dated 5-5-86. Strike pages (8000-8008) - (8008-8010) dated 4-10-86, and pages (8010-8014) - (8016-8702) dated 10-30-85, and substitute in lieu thereof pages (8000-8008) - (8016-8702) dated 5-5-86, which revises the procedures requiring a sworn statement when the appellant fails to attend a hearing or after the appeal period has expired and wishes to appeal the decision and provides instructions that only a representative of the Appeals Branch can grant a continuance or set up a telephone hearing.]

(2) Chapter 4000 [14000], Video Operations [Charts, Form Letters, Reference Materials], strike contents dated 3-11-86 [2-28-86], and substitute in lieu thereof contents dated 6-5-86 [5-8-86, and new pages ((14030) - (14030) - (14030) - (14030(10)), dated 5-8-86, which adds a new section consisting of addresses of state government agencies used in mailing notices of benefit claims]. Strike pages (4150-4150) - (4150-4200) dated 10-18-85, and substitute in lieu thereof pages (4150-4150) - (4200-4200) dated 6-5-86, which provides instructions for accessing the program on CICS which verifies claimants registration with Employment and Training and provides the DOT code.

(3) Chapter 5000, Interstate and Combined Wage Claims, strike pages (5250-5260) - (5270-5270) dated 4-1-86, and insert in lieu thereof pages (5250-5260) - (5270-5270) dated 6-2-86, which revises procedures in the local office manual in accordance with procedures in the ET Handbook regarding interstate claims. Strike pages (5040-5070) - (5070-5090) dated 4-1-86, and substitute in lieu thereof pages (5040-5070) - (5070-5090) dated 6-24-86, which removes the exception of Minnesota's claimants as they are now participating in the double bypass system for interstate claims.

(4) Chapter 6000, Claims Investigation, strike pages (6015-6016) - (6016-6016) dated 3-14-86, and insert in lieu thereof pages (6015-6016) - (6016-6016) dated 6-2-86, which revises procedures regarding chargeability of benefits paid to school employees between two (2) school terms. Strike pages (6033-6033) - (6039-6040) dated 4-22-86, and insert in lieu thereof pages (6033-6033) - (6039-6040) dated 6-2-86, which adds instructions disallowing the deduction of social security benefits retroactively. Strike pages (6033-6033) - (6033-6034) dated 6-2-86, and insert in lieu thereof pages (6033-6033) - (6033-6034) dated 6-18-86, which adds instructions disallowing the deduction of all pension payments retroactively. Strike pages (6106-6106) - (6106-6106(2)) dated 9-16-85, and pages (6043-6048) - (6048-6050) dated 9-16-85, and insert in lieu thereof pages (6106-6106) - (6106-6106(2)) dated 6-24-86, and pages (6043-6048) - (6048-6050) dated 6-24-86, which amends procedures for completing chargeability forms to indicate when protest is untimely.

(5) Chapter 12000, Personnel Time Distribution Section, strike pages (12000-12002) - (12040-12100) dated 11-15-85, and insert in lieu thereof pages (12000-12002) - (12040-12100) dated 6-24-86, which replaces the old three (3)

character program codes with the new four (4) character program codes, deletes instructions for the completion of scanners and adds instructions on the use of the PTL system for employee time reporting.

(6) Chapter 13000, Statistical Reports, strike contents dated 11-14-85, and substitute in lieu thereof contents dated 6-24-86. Strike pages (13000-13010) - (13200-13220) dated 11-14-85, and insert in lieu thereof pages (13000-13200) - (13205-13220) dated 6-24-86, which deletes instructions for completion of the ES-203.1 since this information is available in the computer database.

[Section 4. Summary of Amendment. Tax Collections and Accounting Branch Manual. (1) Chapter 3000, Account and Delinquency Section - Procedures Manual, strike entire Chapter 300 dated 7-29-83, and substitute in lieu thereof Chapter 3000 dated 4-4-86, which removes samples of forms, clarifies the section's operating procedures, and revises the Chapter's format to the standardized Department for Employment Services Manual format.]

[(2) Chapter 4000, Reconsideration Unit, strike entire Chapter 400 dated 5-1-84, and substitute in lieu thereof Chapter 4000 dated 5-1-86, which removes samples of forms, clarifies the unit's operating procedures and revises the chapter's format to the standardized Department for Employment Services Manual format.]

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986, at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986, of their desire to appear and testify at the hearing: Ryan Halloran, Acting General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels
(1) Type and number of entities affected: Thousands of U.I. claimants.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All claimants treated equally.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Field Services
(Proposed Amendment)

905 KAR 1:180. DSS policy and procedures manual.

RELATES TO: KRS 194.030(8), 194.060, 199.011 to 199.375, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208 and 209
PURSUANT TO: KRS 194.050, 199.420, 200.080, 209.030
NECESSITY AND FUNCTION: P.L. 97-35, "Block Grants for Social Services - Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this manual is to implement a statewide social services program.

Section 1. DSS Policies and Procedures Manual. For the purpose of implementing and enforcing those sections of the Kentucky Revised Statutes relating to social service programs for children and adults that apply to the Department for Social Services, the Secretary of the Cabinet for Human Resources hereby adopts, by reference, the Department for Social Services' Policy and Procedural Manual as revised through July 1 and July 11 [April], 1986, as the current policies and procedures of that department. The manual contains policies and procedures relating to management procedures, adult services, support services, family and children's services, and youth services. The Department for Social Services' Policy and Procedures Manual may be reviewed in any departmental field office located in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, during regular working hours.

Section 2. Summary of Amendment. (1) In Chapter I, Management Procedures, Section A.4, Receiving Report - Impressed Cash Vouchers, strike the entire section and substitute in lieu thereof the entire revised Section A.4, dated 7/86, which transmits revised instructions and form DSS-110 necessary for reimbursement of foster care expenditures as they relate to new rates as approved by the General Assembly to

become effective July 1, 1986.

(2) In Chapter II, Adult Services, Section A, Adult Protective Services, strike pages 1 and 2, and pages 23 through 27, dated 12/82, along with forms 291, 292 and 292A dated 8/82, and substitute in lieu thereof pages 1 and 2, and pages 39 through 57, dated 7/86, along with forms 291 and 292 dated 7/86. These revisions reflect changes in the definitions of "adult" and "exploitation," and incorporates into the manual the forms and procedures necessary for the implementation of the automated Adult Protection Reporting System which is to begin operation on July 1, 1986.

(3) In Chapter IV, Family and Children's Services, Section C, Foster Care, strike entire section and insert in lieu thereof entire revised section dated July 1, 1986. The major changes made in this section are as follows:

(a) Incorporates foster care rate changes authorized for fiscal year 1987;

(b) Minor changes in reporting foster care information;

(c) Revises foster care contracts to reflect new per diem rates;

(d) Sets up procedures for compliance with Foster Care External Review Boards; and

(e) Defines the roles of the Recruitment and Certification staff.

(4) In Chapter I, Management Procedures, Section A.5, Fair Hearing Procedures, Civil Rights Discrimination and Service Complaints, strike the entire section dated 10/83 and 5/84, and substitute in lieu thereof Chapter I, Management Procedures, A.5, Fair Hearing Procedures, Civil Rights Discrimination and Service Complaints, dated 7/86. This material revises the method of handling civil rights/service compliants to conform with federal regulations (45 CFR 205.10) and designates that all hearings shall be conducted by the Quality Assurance Branch.

(5) In Chapter I, Management Procedures, incorporate Section A.6, Preventative Assistance, dated 7/86, which establishes guidelines for the utilization of emergency funds granted by the 1986 General Assembly.

(6) In Chapter I, Management Procedures, incorporate Section A.7, Aging Section, Complaint Hearing, dated 7/86, which sets forth guidelines for the conduct of hearings as they relate to contracts with the Area Agencies on Aging, service provides and applicants to provide service, and service recipients/applicants. [In Chapter V, Youth Services, Community Based, Revocation of Supervised Placement, strike pages 20 through 23 dated 6/84, and insert in lieu thereof Chapter V, Youth Services, Community Based, Revocation of Supervised Placement, pages 20 through 23 dated 4/86 which revises the procedures for the revocation hearings process. Revisions include: changing the definition of "Chairperson;" changing Juvenile Court Liaison to Juvenile Specialist and Field Office Supervisors to Family Services Office Supervisor; transportation shall be provided by appropriate staff if another source of transportation is unavailable; and rather than the Deputy Commissioner and Director of the Division of Program Management being standing chairpersons, the Commissioner will name one (1) member of the Hearing Board as Chairperson.]

Section 3. Repeals. The following regulations are hereby repealed: 905 KAR 7:020, Procedural manual for day treatment; 905 KAR 7:040, Continuum of care for children in residential facilities; 905 KAR 7:050, Group home procedural manual; 905 KAR 7:070, Children's residential staff training requirements; 905 KAR 7:080, Children's treatment services facility manual; 905 KAR 7:110, Northern Kentucky Treatment Center policy and procedures manual; 905 KAR 7:120, Lake Cumberland Boys' Camp policy and procedure manual; 905 KAR 7:130, Morehead Treatment Center policy manual; 905 KAR 7:140, Central Kentucky Treatment Center policy manual; 905 KAR 7:150, Green River Boys' Camp policy manual; 905 KAR 7:160, Woodsbend Boys' Camp policies manual; 905 KAR 7:170, Cardinal Treatment Center policy and procedural manual; 905 KAR 7:180, Rice-Audubon policy and procedural manual; 905 KAR 7:190, Lincoln Village policy and procedural manual; 905 KAR 7:200, Re-Ed Treatment policy and procedural manuals; 905 KAR 7:210, Central Kentucky Re-Ed Center policy and procedural manual; 905 KAR 7:220, Owensboro Treatment Center. [905 KAR 1:190, Conduct of hearings for revocation of supervised placement, is hereby repealed.]

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 11 p.m.

PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugenia Jump

(1) Type and number of entities affected: All contractors, recipients of service, applicants for contracting and applicants for service in the Department for Social Service Programs.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Statewide.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Program Management
(Proposed Amendment)

905 KAR 3:030. Matching requirements.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Omnibus Budget Reconciliation Act of 1981 substantially reduced the amount of federal funds the Commonwealth receives through the Title XX "Social Services Block Grant" and the "Community Services Block Grant" established under said Reconciliation Act of 1981. Matching requirements are being established to encourage and assure local support and sharing in service provision; and to reduce, to the extent possible, the full impact of federal reductions in funds.

Section 1. Definitions. As used in this regulation, the following terms shall have the meanings as set forth below:
(1) "Certified expenditures" means any cash expenditure incurred by the local provider of services through the Social Services or Community Services Block Grant funds when such expenditures are determined to be allowable, reasonable, and necessary under applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants. Such certified expenditures may be incurred by the provider of service whether public or private non-profit, or may be certified on behalf of the provider by a third party which may also be a public or private non-profit organization.
(2) "In-kind contributions" means property or services which directly benefit the service purchased; which are contributed by the provider or a non-federal third party without expenditure by the local provider; and would have been an allowable, reasonable and necessary cost in accordance with applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants if purchased by the provider.
(3) "Local matching funds" means any cash received from a local organization or individual, local taxes, state funds received by local agencies, or federal general revenue sharing funds received for use by local governments. No other federal funds shall be allowed as matching and no other funds identified in this regulation for match shall satisfy this requirement if used to match other state or federal funds.

Section 2. All contractors who provide social services funded by Title XX - Social Services Block Grant, P.L. 97-35, shall be required to provide matching on a seventy-five (75) percent/twenty-five (25) percent ratio. Local match may be cash, certified expenditures, or in-kind contributions. In cases where it is advantageous to the state to provide the local match in order to obtain a needed service, the state may provide the local match on behalf of the local agency. [Local match shall be cash in the form of certified expenditures except that in-kind contributions are authorized for in-home services for the elderly and the State Department of Health Services may provide state fund cash match for mental health/mental retardation services.] The local match shall consist of one (1) dollar for every three (3) dollars in federal funds expended for in-kind in the same ratio.

Section 3. Community Services Block Grant. Contractors utilizing Community Services Block Grant funds, P.L. 97-35, shall meet the same requirements set forth in Section 2, except that the matching ratio shall be eighty (80) percent federal and twenty (20) percent local matching funds, and in-kind contributions may be used for all CSBG contracts.

Section 4. (1) Certified expenditures for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or a third party when certified by a third party. Third party entities shall enter a contractual agreement with the provider as to the type of expenses and methods of documentation to be used for all the certified expenditures. The contractual agreement shall include at least a requirement to make records available for audit by the provider, Cabinet for Human Resources, and/or entities authorized by the Cabinet for Human Resources to audit said records. The provider may be subject to disallowances and reimbursement to the Commonwealth if such expenditures are not documented by the provider or the third party.
(2) In-kind contributions for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or third party. Values placed on in-kind contributions shall be based on 45 CFR Part 74, Subpart G, Cost Sharing or Matching, as printed June 9, 1981 and as subsequently amended, except as otherwise authorized in this regulation.
(3) State fund cash match may be inter-accounted to the Cabinet for Human Resources' Department for Social Services for disbursement with the federal funds matched. Inter-accounted funds shall require documentation sufficient to determine that the requirements of this regulation are met.

ANNA GRACE DAY, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: June 26, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.
PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eugenia Jump
(1) Type and number of entities affected: Approximately 43 Title XX contractors.
(a) Direct and indirect costs or savings to those affected: Permits substitution of in-kind match or state fund match for previously required local cash match.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Contractors have had difficulty in meeting required cash match.

Tiering:
Was tiering applied? No. Applies to all Title XX contractors.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.
(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;
(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;
(3) Pregnant women, when the unborn child is deprived of parental support due to death, absence, incapacity or unemployment of the father;
(4) Children of unemployed parents;
(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;
(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;
(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and
(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his/her first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated). For individuals covered on January 1, 1985 pursuant to this section, the usual three (3) month rule on retroactivity (as shown in Section 3(15)) will apply.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:
(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));
(2) Pregnant women are eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this regulation;
(3) Unemployment relating to eligibility of both parents and children is defined as:
(a) Employment of less than 100 hours per

month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family <u>was eligible for and</u> received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. [To qualify for continuing eligibility in this situation, the family must have received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC.] The nine (9) month period begins on the date [AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the nine (9) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which] the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection [by the cabinet] of child or spousal support, and who <u>were eligible for and</u> received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills

during the terminal illness.

(13) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. Effective April 1, 1986, for new approvals and at time of reinvestigation for other cases, the family unit must be determined in the same manner as is required for AFDC cases, except that if a family member(s) is pregnant the unborn child(ren) will be considered as a family member(s) for budgeting purposes.

(14) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(15) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19)) or is sixty-five (65) years of age or over.

Section 5. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than three (3) months in any twelve (12) month period.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 6. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical

assistance payments made on behalf of the recipient.

Section 8. Third Party Liability as a Condition of Eligibility. Any individual applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless such individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

Section 9. [8.] Provision of Social Security Numbers. Beginning May 1, 1985, each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. For recipients, the requirement shall be effective with the first full reinvestigation occurring on or after May 1, 1985.

Section 10. Implementation. The provisions of this regulation, as amended, shall be effective on October 1, 1986, except as otherwise specified herein.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 3, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Acting General Counsel, Cabinet for Human Resources, 275 E. Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hughes Walker
(1) Type and number of entities affected: About 1900 Medicaid recipients.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $950,000 (costs)
2. Continuing costs or savings: $950,000 (costs)
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable to Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:031. Payments for home health services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies: The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services, taking into consideration the upper limit shown in Section 2 of this regulation. Payments made at the interim rate will be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this regulation. The Medicaid final rates may not exceed federally established upper limits for Medicare.

Section 2. Payments may not exceed a prospective upper limit which will be set at 105 percent of the weighted median of the array of allowable per visit costs for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. The array shall be based on latest available annual cost report data with costs trended through June 30; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. For the July 1, 1985 through June 30, 1986 rate year, the upper limit shall be effective for services provided after August 2,

1985. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 [April 30] preceding the rate year.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hughes Walker
(1) Type and number of entities affected: All Medicaid participating home health agencies.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:036. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised July 1 [April 14], 1986, which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:
(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is

requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (non-hospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 135 percent of 102 percent of the median of allowable trended and indexed costs of all other SNFs, however, such upper limit shall not exceed 102 percent of the median of the array of allowable trended and indexed costs of hospital based SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum payment amount for the prospective uniform rate year will be at 102 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for freestanding SNFs and basic ICFs, except that the maximum (upper limit) shall be set at 110 percent of the median of the array.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy services which shall be paid on a prospective rate basis. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and non-legend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an

individual or individuals possess five (5) [twenty (20)] percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for capital costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multi-level facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Department for Medicaid Services shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless such costs are incurred by administrators or owners.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be

determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(12) Each facility shall maintain and make available such records (in a form acceptable to the cabinet) as the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited onsite access for accounting, auditing, medical review, utilization control and program planning purposes.

(13) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(14) The cabinet shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the cabinet will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying cost to be used in setting the prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(15) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(16) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(17) The cabinet may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Each ICF which admits a recipient from an SNF during the period of September 1, 1985 through January 31, 1986 shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered such recipient, subject to the following conditions:

(a) The recipient must meet SNF patient status criteria as of August 31, 1985 only because of non-availability of an ICF bed, where the recipient is on the waiting list of an ICF; and

(b) The incentive payment may be paid for more than ninety (90) covered days of care only if all such days are prior to February 1, 1986.

(20) When a recipient in a SNF changes patient status (from SNF to ICF) on or after February 1, 1986 and is admitted to an ICF within the permitted transfer period for the recipient (i.e., while the recipient still qualifies for coverage at the skilled rate), the ICF shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered the recipient; such incentive payment shall be paid for no more than ninety (90) days of care.

(21) The incentive payment referenced in subsections (19) and (20) of this section shall be paid without regard to maximum payment limitations shown elsewhere in this regulation.

(22) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment will be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient must be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient must have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient must meet ICF patient status criteria, and the appropriate representative of the Department for Social Services must certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however,

the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

(23) SNF's which on February 1, 1986 continued to care for recipients who were classified as meeting SNF patient status criteria as of August 31, 1985 only because of non-availability of an ICF bed, where the recipient is on the waiting list of an ICF, may receive the usual SNF rate for those recipients subject to the following transitional reimbursement standards and criteria:

(a) The facility must file a letter of intent with the Cabinet for Human Resources, Office of the Secretary, 275 East Main Street, Fourth Floor, Frankfort, Kentucky 40621 by January 31, 1986 (receipt in the cabinet is required) for downward conversion of the bed(s) in which the recipient(s) is residing.

(b) Any facility which files a letter of intent must submit to the Certificate of Need Authority (CONA) an appropriate certificate of need application for downward conversion of the skilled bed(s), no later than February 14, 1986, in order for the transitional reimbursement payments to continue.

(c) Payment under this transitional reimbursement provision shall continue only until such time as the Certificate of Need Authority (CONA) has acted on the application and any appropriate licensure action has been effected.

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to non-profit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 7-1-86 [8-3-85])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$28.99 & below	$.92	$.58
29.00 - 29.99	$.86	$.50
30.00 - 30.99	$.78	$.41
31.00 - 31.99	$.70	$.32
32.00 - 32.99	$.61	$.21
33.00 - 33.99	$.51	$.09
34.00 - 35.58 [35.06]	$.35	-

Maximum Payment $35.58 [35.06]

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 7-1-86 [8-3-85])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$69.99 & below [65.99]	$1.38	$.87
70.00 - 75.99 [66.00 - 71.99]	$1.29	$.75
76.00 - 81.99 [72.00 - 77.99]	$1.18	$.62
82.00 - 87.99 [78.00 - 83.99]	$1.06	$.47
88.00 - 93.99 [84.00 - 89.99]	$ .92	$.31
94.00 - 99.99 [90.00 - 95.99]	$ .76	$.13
100.00 - 106.81 [96.00 - 102.59]	$ .53	-

Maximum Payment $106.81 [102.59]

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 7-1-86 [8-3-85])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$ 38.99 & below	$.92	$.58
39.00 - 40.99	.86	.50
41.00 - 42.99	.78	.41
43.00 - 44.99	.70	.32
45.00 - 46.99	.61	.21
47.00 - 48.99	.51	.09
49.00 - 51.04 [50.31]	.35	-

Maximum Payment $51.04 [50.31]*

*The maximum payment for hospital based skilled nursing facilities is set at $68.90 [67.91].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 percent of the median is a lower dollar amount than has been currently set.

Section 5. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement and Contracts [Medical Assistance], a re-evaluation of the point at issue. This request must be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services [Social Insurance], a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division of Reimbursement and Contracts [Medical Assistance]. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts [Medical Assistance], one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel [Division of Management and Development, Department for Social Insurance]. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 6. Definitions. For purposes of Sections 1 through 6 of this regulation, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including indwelling catheters and syringes, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(g) Ventilator therapy services, subject to the coverage limitations shown in the Reimbursement Manual.

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985 and thereafter.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

Section 7. Implementation Date. The provisions of this regulation, as amended, shall be effective with regard to services provided on or after July 1, 1986.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986
FILED WITH LRC: July 3, 1986 at 4 p.m.
PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Acting General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hughes Walker
(1) Type and number of entities affected: All Medicaid participating SNF, ICF, and ICF-MR facilities.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human

Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to Kentucky based (in-state) providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs (utilizing the latest audited annual cost report or unaudited report if an audited report is not available) not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year [and indexed for the rate year,] so as to more accurately approximate actual costs which will be incurred during the year. (If an unaudited report is used, cost will not be adjusted based on audit.)

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement," (revised July 1, 1986 [August 3, 1985]) developed and issued by the cabinet, (incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein), supplemented by the use of Title XVIII reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, [membership dues,] travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $15,000 total valuation annually (unless such excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

(4) The prospective rate shall not exceed 105 percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits may be settled in the usual manner, i.e., through recoupment or withholding.

(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 community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for such services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

Section 4. Reimbursement of Out-of-State Providers. The cabinet shall make payment to out-of-state mental health center providers who are appropriately licensed, participate with their state's Title XIX Medicaid Program, and have met the Kentucky Medical Assistance Program conditions of participation. The payment rate will be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986
FILED WITH LRC: July 1, 1986 at 4 p.m.
PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hughes Walker
(1) Type and number of entities affected: All Medicaid participating mental health centers.

(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
*Any savings from application of the limitation on vehicle costs is expected to be minimal.

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:055. Payments for primary care center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325, 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 General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1986 [1985], and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.
(3) Allowable costs shall not exceed customary charges which are reasonable.
(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.
(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.
(6) During the first six (6) months after the implementation of the policy contained in Section 1(4) of this regulation, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.
(7) The amount of any allowable incentive payment determined pursuant to the policy specified in Section 1(4) of this regulation may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.
(2) The system shall utilize a method whereby primary care providers are 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 will 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 primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the primary care center 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 is not permitted. When a primary care center elects to participate as such in the medical assistance program it may 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 sub-units of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

R. HUGHES WALKER, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 1, 1986

FILED WITH LRC: July 1, 1986 at 4 p.m.

PUBLIC HEARING SCHEUDLED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hughes Walker

(1) Type and number of entities affected: All Medicaid participating primary care centers.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable for Medicaid regulations.

PROPOSED REGULATIONS RECEIVED THROUGH JULY 15

PERSONNEL BOARD

101 KAR 1:300. Repeal of previous regulations.

RELATES TO: KRS 18A.075, 18A.0751
PURSUANT TO: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 1:010, Definitions; 101 KAR 1:020, General provisions; 101 KAR 1:030, Personnel board procedures; 101 KAR 1:060, Application and examinations; 101 KAR 1:070, Registers; 101 KAR 1:080, Certification and selection; 101 KAR 1:090, Types of appointments; 101 KAR 1:100, Probationary period; 101 KAR 1:110, Promotion, transfer, demotion, and detail to special duty; 101 KAR 1:120, Separations and disciplinary actions; 101 KAR 1:130, Appeals; 101 KAR 1:140, Service regulations; 101 KAR 1:160, Merit system; 101 KAR 1:170, Employee grievances.

PHILIP TALIAFERRO, Chairman

APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

PERSONNEL BOARD

101 KAR 1:310. Personnel Board meetings.

RELATES TO: KRS 18A.045, 18A.070, 18A.075
PURSUANT TO: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.045 establishes the Personnel Board and KRS 18A.070 sets forth the procedures for operation of the board. KRS 18A.075 further expands the duties of the board. This regulations is to assure compliance with these statutes and to define specific methods of compliance.

Section 1. Meetings. Regular meetings of the board shall normally be held on the second Friday of each month. The chairman or the executive director shall provide notice of the time, date, and place of any regular meeting to the board members at least seven (7) days in advance of the meeting. Additional meetings may be held by call of the chairman. Written notice of the time, date and place of each meeting shall also be placed on a bulletin board accessible to the public during business hours. A copy of such notice shall be filed with the Secretary of State as a public record. Any request to address the board at a regular board meeting shall be filed with the executive director at least three (3) days before the meeting and shall indicate the subject matter to be addressed and the reason for the request. All such requests to be heard shall be subject to the discretion of the board.

Section 2. Chairman. At the regular meeting in January of each year, the board shall elect one (1) member to act as chairman and one (1) member to act as vice-chairman for a term of one (1) year, or until successors are duly elected. If the office of chairman or vice-chairman is vacated because of death, resignation, or any other manner, before the expiration of term, the board shall elect at the next meeting a successor who shall serve for the unexpired term.

Section 3. Conduct of Meetings. Meetings of the board may be informal, subject to such procedures as may be directed by the chairman.

Section 4. Minutes. The executive director shall attend all meetings of the board, act as its secretary, and record its official actions in the minutes. The time and place of each meeting of the board, names of the board members present, all official acts of the board, the votes of each board member except when the acts are unanimous, and, when requested, a board member's dissent with his reasons shall be recorded in the minutes. The executive director shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting. The minutes or a true copy thereof certified by a majority of the board shall be open to public inspection.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. Not applicable.

PERSONNEL BOARD

101 KAR 1:320. Probationary period.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
PURSUANT TO: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning probationary periods.

Section 1. Initial Probationary Period. (1) An employee initially appointed to a position in the classified service shall serve a six (6) month probationary period, except when appointed to a job classification for which an initial probationary period in excess of six (6) months has been established by 101 KAR 1:325. For such job classifications, the probationary period shall be the number of months specified to apply to that job classification. No initial probationary period shall exceed twelve (12) months.
(2) The initial probationary period shall be a period of special observation and evaluation of an employee's work and shall be utilized for the most effective adjustment of a new employee. Any employee whose job performance does not meet the required standards shall be dismissed.
(3) An employee who satisfactorily completes the initial probationary period shall be granted status. Unless an employee receives notice prior to the end of his initial probationary period that he is dismissed from his position, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service. If an employee receives notice prior to the end of his initial probationary period that he is dismissed, the effective date of such dismissal may be after the date when the employee would have completed the initial probationary period, if this is necessary to comply with the ten (10) working day notice requirement of subsection (4) of this section.
(4) An employee serving an initial probationary period may be dismissed for unsatisfactory performance and shall not have a right to appeal except as provided by 101 KAR 1:350, Sections 11 and 12. If an employee is dismissed while serving an initial probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his dismissal. The notification shall advise the employee of the effective date of dismissal and shall include a general statement of the reason for the dismissal. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.
(5) An employee who has been dismissed while serving an initial probationary period shall be placed on the eligible register for the job classification from which initially appointed, but shall not be certified to the agency which dismissed him unless that agency so requests.
(6) An employee serving an initial probationary period may be disciplined without the right of appeal except as provided by 101 KAR 1:350, Sections 11 and 12.
(7) An employee serving an initial probationary period shall not be promoted, demoted, or transferred.
(8) Provisional service in a job class immediately prior to initial probationary appointment to a position in that job classification shall be credited toward the initial probationary period.
(9) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth month following appointment, unless an initial probationary period in excess of six (6) months has been established by 101 KAR 1:325, in which event it shall be computed from the effective date of appointment to the corresponding date in the month as specified.

Section 2. Promotional Probationary Period. (1) An employee with status who has been promoted to another position in the classified service shall serve a promotional probationary period of six (6) months.
(2) While serving a promotional probationary period, an employee shall retain the rights and privileges of a status employee.
(3) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.
(4) An employee who fails to satisfactorily complete a promotional probationary period for unsatisfactory performance shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion and shall include a general statement of the reason for failure to complete the promotional probationary period. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel. Failure to complete a promotional probationary period for unsatisfactory performance is not appealable, except as provided in 101 KAR 1:350,

Sections 11 and 12.

(5) An employee who was selected for promotion from a promotional register and who has failed to satisfactorily complete a promotional probationary period shall be placed on the promotional register for the job classification from which he was selected for promotion.

(6) An employee serving a promotional probationary period may request that he be reverted to his former position or a position in the same job classification as his former position at any time during the promotional probationary period. If his request is granted by the appointing authority, the notification requirements of subsection (4) of this section do not apply.

(7) If there is no position in the same job classification as his former position to which an employee serving a promotional probationary period may be reverted, the provisions of 101 KAR 2:080 shall apply.

(8) An employee serving a promotional probationary period shall not be promoted, demoted or transferred.

(9) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion.

Section 3. Probationary Period Upon Reinstatement. (1) Except as provided n subsection (2) of this section, an employee who is reinstated to a position in the classified service shall serve an initial probationary period.

(2) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.

Section 4. Probationary Period Upon Re-employment. (1) A laid-off employee who is re-employed or who accepts a bona fide written offer of employment to a position shall serve a promotional probationary period as provided in Section 2 of this regulation. He shall be an employee with status and shall have all the rights and privileges of a status employee.

(2) If an employee is serving a promotional probationary period pursuant to this section and fails to satisfactorily complete the promotional probationary period, he shall be notified in accordance with Section 2(4) of this regulation and removed from the position. He shall then be placed on the re-employment register from which re-employed and any other re-employment register in accordance with the provisions of 101 KAR 1:330, Section 5.

PHILIP TALIAFERRO, Chairman

APPROVED BY AGENCY: July 11, 1986

FILED WITH LRC: July 15, 1986 at 9 a.m.

PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: No appreciable change.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Same as under previous regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No appreciable change.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: May conflict with administrative regulations covering the same subject matter promulgated by other administrative bodies.

(a) Necessity of proposed regulation if in conflict: KRS 18A.0751 specifically directs the Personnel Board to promulgate comprehensive administrative regulations on this subject matter.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No. KRS 18A.0751 specifically provides that no other administrative body shall promulgate administrative regulations on this subject matter.

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:325. Initial probationary periods in excess of six (6) months.

RELATES TO: KRS 18A.0751, 18A.111

PURSUANT TO: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.111 provides that specified job classifications may require an initial probationary period in excess of six (6) months. KRS 18A.0751 provides that initial probationary periods in excess of six (6) months be established by administrative regulation. This regulation is to implement these statutory provisions.

Section 1. Initial Probationary Periods for Specific Job Classifications. The following job classifications shall require an initial probationary period in excess of six (6) months, as specified:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

Section 2. Other Provisions. (1) Except for the length of the initial probationary period, the provisions of 101 KAR 1:320 shall apply to an employee appointed to a job classification specified in Section 1 of this regulation.

(2) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall be required to serve the shorter of the initial probationary periods.

PHILIP TALIAFERRO, Chairman

APPROVED BY AGENCY: July 11, 1986

FILED WITH LRC: July 15, 1986 at 9 a.m.

PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: No appreciable change.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No appreciable change.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:330. Employee actions.

RELATES TO: KRS 18A.115, 18A.075, 18A.0751

PURSUANT TO: KRS Chapter 13A, 18A.075

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service governing promotion, demotion, transfer, reinstatement and re-employment. KRS 18A.115 relates to promotion of career employees. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning these actions.

Section 1. Promotion. (1) Vacancies in the classified service shall be filled by promotion whenever practicable and in the best interest of the service, except as provided by Section 5 of this regulation and 101 KAR 2:080. Appropriate consideration shall be given to the qualifications, record of performance, conduct and seniority of applicants for promotion.

(2) An employee with status may be promoted from his position in one job classification to an existing vacant position in a different job classification in the classified service having

a higher minimum salary or a greater scope of discretion or responsibility as determined by the class specifications for these job classifications.

(3) When it is determined that it is practicable and in the best interest of the service, promotions shall be made on a competitive basis. When such a determination is made, the Commissioner of Personnel, upon written request of the appointing authority, stating the reasons therefore, shall authorize the filling of a particular vacancy in a manner prescribed herein.

(4) For promotions made on a competitive basis, the Commissioner of Personnel shall announce the establishment of a promotional register for a job classification, examine all qualified, applying status employees, and prepare a promotional register of all eligibles in rank order, starting with the highest to lowest examination scores. Selection from passing scores shall be made from the promotional register with appropriate consideration given to the qualifications, record of performance, conduct, and seniority of applicants. When there are less than five (5) eligibles available on a promotional register the appointing authority may request and appoint from an open continuous register.

(5) From promotions made on a non-competitive basis, the Commissioner of Personnel shall examine the employee selected for promotion by the appointing authority to determine whether the employee is qualified for the position prior to the approval of the promotion.

(6) An employee with status who is promoted within the classified service shall serve a promotional probationary period in accordance with 101 KAR 1:320, Section 2.

(7) Promotions may be inter-agency or intra-agency. If the promotion is inter-agency, the employee retains reversion rights to his former position or a position in the same job classification as his former position in his former agency.

(8) A career employee with status may be promoted to a position in the unclassified service. Any career employee so promoted shall retain his status in the classified service. Upon termination of employment in the unclassified service, a career employee shall revert or, if there is no position available, shall be considered for employment in the classified service in accordance with KRS 18A.130 and 18A.135, and Section 5 of this regulation.

(9) Any employee in the classified service, other than a career employee, may be promoted to a position in the unclassified service, but shall not have reversion rights to any position in the classified service. Any employee, other than a career employee, who was promoted or otherwise changed, with no break in service, from a position in the classified service to a poisition in the unclassified service prior to July 15, 1986, shall retain such reversion rights as existed at the time of the promotion or other action.

Section 2. Demotion. (1) An employee with status may be demoted from his position in one job classification to an existing vacant position in a different job classification in the classified service having a lower minimum salary range or less discretion or responsibility as determined by the class specifications for these job classifications.

(2) Except as provided in subsection (4) of this section, an employee with status may be demoted only for cause. Demotion for cause shall be in accordance with 101 KAR 1:340, Section 2.

(3) Demotions for cause shall be intra-agency only.

(4) If, for personal or other reasons, an employee with status requests in writing that he be demoted, the appointing authority may make such a voluntary demotion. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the demotion, identifying information concerning the position demoted from and to, and a waiver of the right of appeal concerning the demotion. A copy of the request shall be forwarded to the Commissioner of Personnel.

(5) Voluntary demotions may be inter-agency or intra-agency.

Section 3. Transfers. (1) An employee with status may be transferrd from his position in one job classification to an existing vacant position in the same job classification or a different job classification having the same salary ranges and the same level of discretion and responsibility as determined by the class specifications for these job classifications. An employee who is transferred shall receive the same salary as he was receiving prior to transfer.

(2) If a transfer is to a position in a different job classification, the employee must meet the minimum requirements of, and may be examined for, the job classification to which transferred, unless the employee has previously had status in that job classification.

(3) Transfers may be on a voluntary of involuntary basis. Unless an employee requests a transfer in writing, such transfer shall be deemed to have been made on an involuntary basis. The appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(4) If the transfer is on an involuntary basis, the employee shall receive notice of his transfer prior to the effective date of such transfer. Following notification of an involuntary transfer, an employee must report for work at the position to which transferred on the effective date of the transfer. The notice shall be in writing, shall state the effective date of the transfer, the reason for the transfer and the employee's selection for transfer, and the employee's obligation to report to the new position. The notice shall also advise the employee that he has the right to appeal the transfer to the board within thirty (30) days of receipt of the notice, excluding the day that he received notification, in accordance with 101 KAR 1:350. An appeal form shall be attached to the notice. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

(5) If an involuntary transfer is to a position with a work station in a different county, the employee shall receive the notice specified in subsection (4) of this section at least thirty (30) days prior to the effective date of the transfer. In such a case, the appointing authority shall pay the employee's

travel expenses following transfer for up to thirty (30) days following the effective date of transfer, in accordance with administrative regulations relating to reimbursement of travel expenses, and shall pay the employee's moving expenses, if any. The notice specified in subsection (4) of this section shall advise the employee of these provisions.

(6) Involuntary transfers shall be intra-agency only.

(7) If, for personal or other reasons, an employee with status requests in writing that he be transferred, the appointing authority may make such a voluntary transfer. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the transfer, identifying information concerning the position transferred from and to, and a waiver of the right to appeal concerning the transfer. A copy of this request shall be forwarded to the Commissioner of Personnel.

(8) Voluntary transfers may be inter-agency or intra-agency.

Section 4. Reinstatement. (1) An employee with status who has resigned while in good standing may be reinstated to an existing vacant position in his former job classification, or in any job classification having the same or lower salary range as that currently assigned to the employee's former job classification for which he is qualified.

(2) Except as provided in subsection (3) of this section, reinstatement shall be made only upon request of the appointing authority and with the prior approval of the Commissioner of Personnel. Such approval shall include a finding that the candidate for reinstatement meets the current qualifications for the former job classification. If the reinstatement is to a different job classification, the candidate must pass the appropriate examination prior to reinstatement unless the employee has previously had status in that job classification. An employee who is reinstated shall serve an initial probationary period in accordance with 101 KAR 1:320.

(3) An employee may be ordered reinstated by the board following a hearing in accordance with 101 KAR 1:360. An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.

Section 5. Re-employment. (1) An employee with status who has been laid off or a career employee who has been separated by layoff, dismissal other than for cause, and, in the case of an unclassified management employee, resignation other than in lieu of dismissal for cause, may be re-employed within five (5) years from the effective date of layoff or separation.

(a) An employee with status who has been laid off shall be placed on a re-employment register for the job classification from which he was laid off and upon his written request for any other job classifications for which he is qualified. The Department of Personnel shall assist the laid off employee in determining for which job classifications he is qualified. A laid off employee shall have the right to test for any job classifications for which he is qualified to take an examination. If he passes the examination, he shall be placed on the re-employment register for that class.

(b) A career employee who is eligible for re-employment shall automatically be placed on the re-employment register for the job classification of the last position in the classified service in which he had status. If he wishes to be placed on re-employment registers for other job classifications for which he is qualified and passes the appropriate examination, he shall notify the Department of Personnel in writing. If more than one career employee requests to be placed on the re-employment register for any job classification, the Department of Personnel shall list the names of such career employees in the order of their seniority.

(2) Eligibility to remain on a re-employment list shall expire five (5) years from the effective date of the layoff or separation.

(3) An eligible on a re-employment register shall not be removed from any such register unless:

(a) He notifies the department in writing that he no longer desires consideration for a position on such re-employment register;

(b) He declines two (2) written offers of re-employment or appointment to a position of the same job classification and salary, and located in the same county, as the position from which he was laid off;

(c) Without good cause, he fails to report for an interview after he has been notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) He is unqualified for appointment;

(e) He is unable to perform the duties of the job classification;

(f) He has made a false statement of a material fact in his application;

(g) He has used or attempted to use political influence or bribery to secure an advantage in connection with his placement on the re-employment register;

(h) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the Governor;

(i) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification;

(j) He cannot be located by postal authorities at the last address provided by him; or

(k) He has otherwise willfully violated the provisions of this Act.

(4) When the Department of Personnel is notified by an appointing authority in writing that an eligible on a re-employment register has been re-employed or has accepted a bona fide offer of appointment to any position in the classified service, effective on a specified date, his name may be removed from the re-employment register for all job classifications for which the maximum salary is the same as or less than that of the job classification to which he has been appointed.

(5) When an eligible is removed from a re-employment register he shall be notified in writing and shall be notified of his right to appeal to the board under the provisions of 101 KAR 1:350.

(6) No vacancy in the classified service may be filled by initial appointment or reinstatement while there are eligibles on a

re-employment register for that job classification who are available for the county in which the position is located. Nothing in this section shall preclude the filling of vacant positions by promotion, reversion during a promotional probationary period, reversion of a career employee promoted to the unclassified service, demotion, or transfer.

(7) Upon request by an appointing authority for a register for a job classification for which there is a re-employment register, the Department of Personnel shall certify the name of the eligible with the greatest seniority from the re-employment register. If more than one eligible has the same seniority, all such eligibles shall be certified. If the certified eligible or eligibles decline a bona fide written offer of re-employment or appointment to a position in the classified service, the Department of Personnel shall certify the eligible or eligibles with the next greatest seniority. Laid off employees shall be certified prior to career employees.

(8) An eligible on a re-employment register who is re-employed or who accepts a bona fide written offer of appointment to a position in the classified service shall serve a promotional probationary period in accordance with 101 KAR 1:320. He shall be an employee with status and shall have all the rights and privileges granted employees with status.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Same as under previous regulations.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: May conflict with administrative regulations covering the same subject matter promulgated by other administrative bodies.
(a) Necessity of proposed regulation if in conflict: KRS 18A.0751 specifically directs the Personnel Board to promulgate comprehensive administrative regulations on this subject matter.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No. KRS 18A.0751 specifically provides that no other administrative body shall promulgate administrative regulations on this subject.
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:340. Disciplinary actions.

RELATES TO: KRS 18A.020, 18A.075, 18A.0751, 18A.095
PURSUANT TO: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing dismissals, suspensions, fines and other discplinary measures. KRS 18A.095 relates specifically to dismissals, suspensions and other penalizations. KRS 18A.020 relates, in part, to written reprimands. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning these actions.

Section 1. Dismissal. (1) An employee with status may be dismissed only for cause. An employee with status may appeal his dismissal in accordance with 101 KAR 1:350. An employee serving an initial probationary period may be dismissed in accordance with the provisions of 101 KAR 1:320, Section 1, and the provisions of this section do not apply. An employee serving an initial probationary period shall not have the right to appeal his dismissal, except as provided by 101 KAR 1:350, Sections 11 and 12.

(2) Prior to dismissal, an employee shall be notified in writing by the appointing authority of the intent to dismiss him. The notice shall state the date of the intended dismissal, the specific reasons for the intended dismissal, including the statutory or regulatory violation, the specific action or activity on which the intended dismissal is based, the date, time and place of such action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee that he has the right to appear personally, or with counsel if he has retained counsel, at a pre-termination hearing to reply to the head of the cabinet or agency or his deputy or the appointing authority.

(3) Attached to every notice of intent to dismiss shall be a form, prepared by the Department of Personnel, which shall be completed by an employee who wishes to request a pre-termination hearing and forwarded to the

appointing authority within five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives notification. If this form is not completed and submitted to the appointing authority within five (5) working days after receipt, it will be deemed that the employee has waived his right to a pre-termination hearing.

(4) If a pre-termination hearing is requested, the appointing authority shall hold the pre-termination hearing within six (6) working days after receipt of the request, excluding the day the request is received.

(5) Pre-termination hearings may be informal. The employee, either personally or by counsel, shall have the opportunity to respond to the charges contained in the notice of intent to dismiss.

(6) Within five (5) working days of the pre-termination hearing, excluding the day of the pre-termination hearing, the appointing authority shall determine whether to dismiss the employee or to alter, modify, or rescind the intended dismissal and shall notify the employee in writing of the decision, and the reasons therefore. If no request for a pre-termination hearing was received, the appointing authority shall notify the employee that his right to such a hearing has been waived.

(7) If the appointing authority determines after the pre-termination hearing to dismiss or otherwise penalize the employee, or if no pre-termination hearing is requested by the employee, the appointing authority shall notify the employee in writing of the effective date of his dismissal or other penalization and the specific reason for dismissal or other penalization, including the statutory or regulatory violation, the specific action or activity on which the dismissal or penalization is based, the date, time and place of such action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee of his right to appeal his dismissal or penalization within thirty (30) days after receipt of the notice, excluding the day he receives notification. An appeal form shall be attached to the notice. The notice must be received by the employee prior to the effective date of dismissal or penalization.

(8) The notice required by subsections (6) and (7) of this section may be combined provided all requirements of both subsections are satisfied.

(9) At the time of notification, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Commissioner of Personnel.

Section 2. Demotion. (1) An employee with status may be demoted for cause. An employee with status may appeal his demotion in accordance with 101 KAR 1:350.

(2) Prior to the effective date of the demotion, the employee shall be notified by the appointing authority in writing of the effective date of the demotion and the specific reasons for the demotion including the statutory or regulatory violation, the specific action or activity on which the demotion is based, the date, time and place of the action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee with status of his right to appeal his demotion within thirty (30) days after receipt of the notice, exluding the day he receives notification. An appeal form shall be attached to the notice.

(3) At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

Section 3. Suspension. (1) An employee may be suspended, without pay, for cause. An employee with status may appeal his suspension in accordance with 101 KAR 1:350. An employee serving initial probationary period may be suspended without the right of appeal except as provided by 101 KAR 1:350, Sections 11 and 12.

(2) A suspension may not exceed thirty (30) working days.

(3) Prior to the effective date of the suspension, the employee shall be notified by the appointing authority in writing of the effective date of the suspension and the specific reason for the suspension including the statutory or regulatory violation, the specific action or activity on which the suspension is based, the date, time and place of the action or activity, and the names of the parties involved including any witnesses. The notice shall also advise the employee with status of his right to appeal his suspension within thirty (30) days after receipt of the notice, excluding the day he receives the notification. An appeal form shall be attached to the notice.

(4) At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

Section 4. Disciplinary Fine. (1) An employee may be fined, for cause, up to ten (10) days pay. An employee with status may appeal a disciplinary fine in accordance with 101 KAR 1:350. An employee serving an initial probationary period may be fined without the right of appeal except as provided by 101 KAR 1:350, Sections 11 and 12.

(2) A disciplinary fine may not exceed ten (10) days pay. The fine shall be computed on the basis of the employee's current salary.

(3) Prior to the implementation of a disciplinary fine, the employee shall be notified by the appointing authority in writing of the amount of the fine, the manner of imposing the fine, including the pay period or periods from which the fine will be deducted, and the specific reason for the fine including the statutory or regulatory violation, the specific action or activity on which the fine is based, the date, time and place of the action or activity, and the names of the parties involved, including any witnesses. The notice shall also advise the employee with status of his right to appeal the fine within thirty (30) days after receipt of the notice, excluding the day he receives notification. An appeal form shall be attached to the notice.

(4) At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel and the board.

Section 5. Written Reprimand. (1) An employee may be given a written reprimand preliminary to a disciplinary action. The written reprimand may be issued by the appointing authority or his designee, an intermediate supervisor, a division director, or the employee's immediate supervisor.

(2) A written reprimand shall be documented in detail. The employee shall be provided with a copy of the documentation and shall have the

right to prepare a written response to the written reprimand after review of the documentation.

(3) The written reprimand shall include notice to the employee of his right to respond in writing to the written reprimand and shall advise the employee that the written reprimand, the supporting documentation and his response will be placed in his personnel files.

(4) The employee's written response shall be attached to the written reprimand and the supporting documentation, and a copy of each shall be placed in the employee's personnel file maintained by the agency. A copy of each shall also be forwarded to the Department of Personnel and included in the employee's official personnel file maintained by the department if it complies with the requirements of this section.

(5) Receipt of a written reprimand, in and of itself, is not an appealable penalization. The subject matter of the written reprimand may be grievable under 101 KAR 1:370.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: Not possible to project increased costs at this time.

1. First year: See above
2. Continuing costs or savings: See above
3. Additional factors increasing or decreasing costs (note any effects upon competition): Procedure required for dismissal of employees by SB 340, implemented by this regulation, may increase costs to state agencies, amount depends on number of dismissals.

(b) Reporting and paperwork requirements: Additional paperwork required under dismissal procedures as specified by SB 340 and implemented by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No appreciable change.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: May conflict with administrative regulations covering the same subject matter promulgated by other administrative bodies.

(a) Necessity of proposed regulation if in conflict: KRS 18A.0751 specifically directs the Personnel Board to promulgate comprehensive administrative regulations on this subject matter.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No. KRS 18A.0751 specifically provides that no other administrative body shall promulgate administrative regulations on this subject matter.

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:350. Right of appeal.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
PURSUANT TO: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the comprehensive administrative regulations promulgated by the Personnel Board may include such administrative regulations not inconsistent with KRS Chapter 18A as may be proper and necessary for its enforcement. KRS 18A.095 contain specific provisions regarding an employee's right to appeal. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning an employee's right to appeal to the Personnel Board.

Section 1. Dismissal. A classified employee with status who is dismissed may appeal to the board within thirty (30) days after receipt of the notice of dismissal, excluding the day notification is received.

Section 2. Demotion. A classified employee with status who is demoted may appeal to the board within thirty (30) days after receipt of the notice of demotion, excluding the day notification is received.

Section 3. Suspension. A classified employee with status who is suspended may appeal to the board within thirty (30) days after receipt of the notice of suspension, excluding the day notification is received.

Section 4. Disciplinary Fine. A classified employee with status who is fined as a disciplinary measure may appeal to the board within thirty (30) days after receipt of the notice of imposition of the fine, excluding the day notification is received.

Section 5. Involuntary Transfer. A classified employee with status who is involuntarily transferred may appeal to the board within thirty (30) days after receipt of the notice of transfer, excluding the day notification is received.

Section 6. Layoff. A classified employee with status who is laid off may appeal to the board within thirty (30) days after receipt of the notice of the layoff, excluding the day notification is received.

Section 7. Reallocation. An employee whose salary range or level, rank, discretion or responsibility as defined by the class specifications involved, has been diminished by the reallocation of his position may, after a determination by the Commissioner of Personnel following the employee's request for reconsideration, appeal to the board. Such appeal must be filed within thirty (30) days after receipt of the notice of the commissioner's determination, excluding the day notification is received.

Section 8. Reclassification. An employee whose salary range or level, rank, discretion or responsibility as defined by the class specifications ivolved, has been diminished by reclassification may appeal to the board. Such appeal must be filed within thirty (30) days after receipt of the notice of the reclassification, excluding the day notification is received.

Section 9. Access to Records. An employee may appeal to the board if his right to inspect or copy records relating to him, including preliminary and other supporting documentation, has been denied, abridged, or impeded by an agency. Such an appeal may be filed only after the employee, applicant or eligible has made a written request to inspect or copy the record and has received a written response to his request which has denied, abridged, or impeded his right to inspect or copy the record in question. Such appeal must be filed within thirty (30) days after the receipt of the written response to his request, excluding the day the written response is received.

Section 10. Evaluation. An employee may appeal an evaluation to the board provided the employee has complied with the review procedure established by 101 KAR 2:110. Such appeal must be filed with the board within thirty (30) days after the employee has received the written decision of his second-line supervisor, exlcuding the day the written decision is received.

Section 11. Discrimination. An employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, handicap, or age between forty (40) and seventy (70). The employee must first file a complaint or grievance under the grievance procedure as provided in 101 KAR 1:370 unless the action is appealable under Sections 1 through 10 of this regulation, in which case the procedure specified for appeal in the appropriate section must be followed. Following completion of the grievance procedure, an appeal to the board must be filed within thirty (30) days of receipt of the final written determination of the appointing authority, excluding the day the final written determination is received.

Section 12. Political Discrimination. An employee may appeal to the board an action alleged to be based on discrimination due to an employee's political affiliations or opinions. The employee must first file a complaint or grievance under the grievance procedure provided in 101 KAR 1:370, unless the action is appealable under Sections 1 through 10 of this regulation, in which case the procedure specified for appeal in the appropriate section must be followed. Following completion of the grievance procedure, an appeal to the board must be filed within thirty (30) days of receipt of the final written determination of the appointing authority, excluding the day the final written notification is received.

Section 13. Other Penalization. A classified employee with status may appeal any other action that diminishes the level, rank, discretion or responsibility of the employee without proper cause or which is an abridgement or denial of other rights granted to state employees. The employee must first file a complaint or grievance under the grievance procedure as provided in 101 KAR 1:370. Following completion of the grievances procedure, an appeal to the board must be filed within thirty (30) days of receipt of the final written determination of the appointing authority, including the day the final written determination is received. Appeals concerning an appointing authority's failure to act may be appealed only pursuant to this section.

Section 14. Appeals by Applicants and Eligibles. (1) Any applicant whose application for admission to an open-competitive examination has been rejected may appeal to the board for reconsideration of his qualifications and for admission to the examination. Such appeal must be filed with the board within thirty (30) days after written notice of rejection, including the reasons therefore, was mailed to the last address provided by the applicant. The Commissioner of Personnel may conditionally admit the applicant to the examination pending reconsideration by the board.

(2) Any appicant who has taken an examination may appeal to the board for review of his rating in any part of such examination to assure that uniform rating procedures have been applied fairly and equally. Such appeal must be filed with the board within thirty (30) days after written notice of examination scores was mailed to the last address provided by the applicant.

(3) An eligible whose name is removed from a register may appeal to the board within thirty (30) days after notice of the action, including the reasons therefore, by the Commissioner of Personnel was mailed to the last address provided by the eligible.

(4) An applicant or eligible may appeal to the Personnel Board regarding access to records pursuant to Section 9 of this regulation. Such appeal must be filed with the board within thirty (30) days after the written response was mailed to the last address provided by the applicant or eligible.

(5) An applicant or eligible may appeal an action alleged to be based on discrimination pursuant to Section 11 or 12 of this regulation. The compliant or grievance shall be filed with the agency responsible for the alleged discriminatory action. such appeal must be filed within thirty (30) days after the final written determination of the appointing authority is

mailed to the last address provided by the applicant or eligible.
(6) As used in this section, applicant or eligible includes current employees who have applied for, or are on any register for, any job classification.

Section 15. Appeals by Probationary Employees. (1) An employee serving an initial probationary period may appeal to the board pursuant to Sections 7, 8, 9, 11 and 12 of this regulation.
(2) An employee serving a promotional probationary period is an employee with status and may appeal to the board pursuant to Sections 1 through 13 of this regulation.

Section 16. Appeals by Unclassified Employees. (1) Any unclassified employee who is dismissed, demoted or suspended, or otherwise penalized for cause may appeal to the board for review thereof pursuant to the applicable section of this regulation.
(2) Any unclassified employee may file an appeal pursuant to Sections 9 and 11 of this regulation.
(3) An unclassified employee serving in a federally-funded time limited position may appeal to the board pursuant to Section 10 of this regulation.

Section 17. General Provisions. (1) All appeals must be filed with the Personnel Board through the office of the executive director.
(2) All appeals must be filed in the office of the executive director within the thirty (30) calendar day period specified in the applicable provisions of this regulation. When the 30th day of the filing period falls on a day when the executive director's office is closed during normal working hours, the appeal may be filed on the next regular working day. Failure to file an appeal within this time limit will result in denial of the appeal.
(3) All appeals must be in writing on the appeal form prescribed by the board. Copies of the appeal form shall be distributed by the Department of Personnel and shall be available at the employee's place of work. If a request for an appeal or a hearing is not on the appeal form, it will be returned.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: Not possible to project any increased costs at this time.
1. First year: See above
2. Continuing costs or savings: See above
3. Additional factors increasing or decreasing costs (note any effects upon competition): Unable to determine how many additional appeals may be filed under widened right of appeal provided by SB 340 and implemented by this regulation.
(b) Reporting and paperwork requirements: New form for appeal required by SB 340.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Not possible to project increased costs at this time.
1. First year: See above
2. Continuing costs or savings: See above
3. Additional factors increasing or decreasing costs: Unable to determine how many additional appeals may be filed under widened right of appeal provided by SB 340 and implemented by this regulation.
(b) Reporting and paperwork requirements: New form for appeal required by SB 340.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: May conflict with administrative regulations covering the same subject matter promulgated by other administrative bodies.
(a) Necessity of proposed regulation if in conflict: KRS 18A.0751 specifically directs the Personnel Board to promulgate comprehensive administrative regulations on this subject matter.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No. KRS 18A.0751 specifically provides that no other administrative body shall promulgate administrative regulations on this subject matter.
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:360. Appeal procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
PURSUANT TO: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. KRS 18A.095 relates specifically to the manner in which hearings are to be conducted. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning the procedures for hearing of appeals.

Section 1. Scheduling of Appeals. (1) Upon receipt of an appeal, the executive director shall transmit copies to the appointing authority and the Department of Personnel.

(2) The executive director shall schedule the appeal for a hearing to be conducted within sixty (60) days after the appeal was filed. Written notice shall be sent to all parties as to the date and place of the hearing. The board shall, within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.

(3) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders to the appealing employee regarding the appeal will be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) Unless otherwise directed by the board, the executive director shall assign the appeal to be heard by any of the following, who shall serve as hearing examiners:

(a) Two (2) non-elected board members;

(b) A non-elected board member and the executive director;

(c) A non-elected board member and a hearing officer;

(d) The executive director and a hearing officer; or

(e) The general counsel of the board and either a non-elected board member, the executive director, or a hearing officer.

(5) Hearing officers employed by the board to assist in the hearing of appeals shall be attorneys authorized to practice law in Kentucky.

(6) Unless the appeal is to be heard by the full board, the executive director shall designate a chief hearing examiner in each appeal. If the appeal is to be heard by the full board, the chairman shall be the chief hearing examiner.

(7) All appeals shall be scheduled to be heard in Frankfort, Kentucky.

Section 2. Request for Continuance. (1) Any party may request a continuance of a scheduled hearing for good cause. Such request must be in writing, must state the reason for the request, and shall include proposed dates for rescheduling the hearing. The request shall be filed with the board, through the office of the executive director, and mailed to all other parties at least seven (7) days prior to the scheduled hearing.

(2) If a continuance is requested by an employee who would be entitled to back pay if successful in his appeal, the request must include a waiver of back pay from the date of the originally scheduled hearing until the date of the hearing as rescheduled pursuant to his request.

(3) Any party objecting to a requested continuance may file a written objection stating the reason therefore with the board, through the office of the executive director, within four (4) days after the request for continuance was mailed. Copies shall be mailed to all other parties.

(4) A general continuance will be granted only in extraordinary circumstances, unless agreed upon by all parties and the chief hearing examiner.

(5) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(6) All requests for continuances shall be ruled on by the chief hearing examiner. At the direction of the chief hearing examiner, the executive director shall prepare, execute, and transmit to all parties an interim order either granting or denying the requested continuance. If the request is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Pre-Hearing Procedures. (1) Any motion, request or filing required by this section by any party prior to the scheduled hearing shall be in writing, shall be filed with the board through the office of the executive director, and shall be served on all other parties.

(2) The chief hearing examiner shall rule on any motion or request. At the direction of the chief hearing examiner, the executive director shall prepare, execute and transmit to all parties an interim order stating his ruling. Interim orders are not reviewable by the board except as part of the record of the hearing on final review, unless otherwise provided in the interim order.

(3) No motions for summary judgment shall be considered. No motion to dismiss the appeal shall be considered except on the ground that the appeal was not timely filed or, in the case of an appeal filed by an unclassified employee, for failure to state the cause for which he has been dismissed or penalized. If such a motion to dismiss is granted, or if the chief hearing examiner determines, upon review, that an appeal was not timely filed or, in the case of an unclassified employee, failed to state the cause for which he has been dismissed or penalized, an interim order shall be entered and such order shall be reviewed by the full board at its next regularly scheduled meeting.

(4) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders to the appealing employee regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(5) An appealing employee shall notify all other parties and the board in writing of any change of address.

(6) A list of witnesses who may be called to testify at the hearing and any request for the production of documents shall be filed by each party at least five (5) days prior to the scheduled hearing.

(7) Subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(8) Depositions for proof may be taken only in extraordinary circumstances and upon authorization by the chief hearing examiner. A request to take a deposition for proof shall be filed at least seven (7) days prior to the scheduled hearing. Any objections to such request shall be filed at least two (2) days of receipt of the request.

(9) Upon request of all parties and approval

by the chief hearing examiner, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the chief hearing examiner may join other parties as necessary to appropriately consider the matter on appeal.

(10) The chief hearing examiner may schedule a pre-hearing conference to be held no more than five (5) days prior to the scheduled hearing. The pre-hearing conference may be utilized to define the issues to be considered at the hearing, to determine which facts, if any, can be stipulated, and to rule on any pending motions or requests, or to address any other matter which will facilitate the hearing of the appeal.

Section 4. Conduct of Hearing. (1) No appeal shall be decided by the board except after a hearing except as provided in Section 3(3) of this regulation. Each appeal shall be decided on its merits and the decision of the board shall be based on the evidence, facts, and information presented at the hearing and contained in the record.

(2) Each party shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts. An appealing employee is not required to retain counsel and may proceed without counsel if he so desires.

(3) Unless the appeal is heard by the full board, both hearing examiners assigned to the appeal, pursuant to Section 1 of this regulation, shall hear the appeal. The chief hearing examiner shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing, including motions filed or presented orally at the hearing. He shall require an orderly and proper decorum at the hearing, and he shall be authorized to require compliance with his rulings.

(4) Either hearing examiner may participate in the hearing by questioning witnesses. Upon his own motion, or upon request of a party or the other hearing examiner, the chief hearing examiner may require the production by a party of documents, records, or other material relevant to the appeal.

(5) All parties shall have access to information produced by an investigation by the board of any matter related to an appeal. Such information shall be made a part of the record by the chief hearing examiner and any party shall be permitted an adequate opportunity to rebut or comment on such information.

(6) Each appeal shall be decided individually unless all parties and the chief hearing examiner have agreed to the consolidation of cases involving the same or similar facts.

(7) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(8) Technical rules of evidence and the rules of civil procedure do not apply.

(9) The burden of proof shall be on the appointing authority, unless the appeal is one which was required by 101 KAR 1:350 to be first filed through the employee grievance procedure. In such cases, the burden of proof shall initially be on the appealing employee.

(10) The party with the burden of proof shall put on its case first, presenting any witnesses and documentation, subject to cross examination. The opposing party shall then put on its case, presenting any witnesses and documentation, subject to cross examination.

(11) All parties shall provide four (4) copies of any exhibit which is to be introduced as evidence.

(12) A record shall be made by a court reporter of the evidence presented at the hearing.

(13) Appeal hearings shall be open to the public. However, no electronic media coverage, including radio or television broadcasting or video recording, shall be permitted during the hearing.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the chief hearing examiner shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record. If the appeal was heard by the full board, the chairman shall prepare the recommended order.

(2) The findings of fact shall include, but are not limited to, findings that the action being appealed was or was not taken with just cause, that the action being appealed was or was not erroneous or excessive in view of all the surrounding circumstances, or that the action being appealed was or was not taken in violation of laws prohibiting discrimination. Where appropriate, the findings shall also include a determination as to whether the appealing employee was or was not penalized.

(3) The recommendations shall include, but are not limited to, recommendations that the action being appealed be sustained, rescinded, altered or modified, that the appealing employee be reinstated or otherwise be made whole, that the appointing authority be directed to take or refrain from taking some action, or that the appeal be dismissed.

(4) At the direction of the chief hearing examiner, the recommended order shall be entered and transmitted by the executive director to all parties.

(5) Any party may submit written exceptions to the findings of fact and recommendations. Such exceptions must be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, and served on all other parties.

(6) Any party may submit a written response to any exceptions filed with the board. Such response must be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, and served on all other parties.

(7) If it is recommended that an employee who has been dismissed for cause be reinstated, exceptions filed by the appointing authority may include a request, supported by sufficient justification, that the employee not be reinstated to his former position until conclusion of any appeal of the board's decision under KRS 18A.100.

(8) Any exception or response which is not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

(9) Any party may request, in writing, oral argument before the board. Such request must be filed with the board through the office of the executive director within fifteen (15) days of entry of the recommended order, and served on all other parties. Upon such request, or upon

its own motion, the board shall permit all parties to present oral argument, subject to such limitations as prescribed by the chairman.

Section 6. Board Review and Action. (1) The full board shall review the record of evidence presented at the hearing, the findings of fact and recommendations of the chief hearing examiner, the written exceptions and responses filed by the parties, and any oral arguments prior to reaching a final determination. Each appeal shall be decided on its merits and the board shall base its decision on the evidence, facts and information contained in the record.

(2) The board may adopt as submitted the findings and recommendations of the chief hearing examiner, amend such findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing examiners for further action as appropriate.

(3) Following consideration by the full board, a final order shall be entered disposing of the appeal. Such order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

(4) If the board finds that the action appealed was taken without just cause or in violation of laws prohibiting discrimination, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay, or otherwise make the employee whole.

(5) If the board finds that the action appealed was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify or rescind the action, or otherwise grant such relief to which the employee is entitled.

(6) If the board's order is appealed by the appointing authority pursuant to KRS 18A.100, the reinstated employee shall remain in the position to which reinstated until the conclusion of such court appeal, unless the order of the board directs otherwise.

(7) When an employee has been dismissed and not ordered reinstated after appeal, the board may direct that his name be placed on an appropriate re-employment register for any similar position.

(8) Unless the order of the board is appealed pursuant to KRS 18A.100, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board. An employee who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at his hearing before the board.

Section 7. Appeal of Board Decision. (1) Any final order of the board may be appealed by any party pursuant to KRS 18A.100.

(2) If the appointing authority appeals the final order of the board, an employee who was ordered reinstated shall remain in the position to which reinstated until the conclusion of such court appeal, unless the order of the board directs otherwise.

(3) If a final order of the board is appealed, an employee who prevails in the final adjudication shall be credited with the amount of leave time used for time spent at his hearing before the board and before the court. An employee who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at his hearing before the board and before the court.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: Not possible to project any increased costs at this time.
1. First year: See above
2. Continuing costs or savings: See above
3. Additional factors increasing or decreasing costs (note any effects upon competition): Provisions of SB 340 requiring employee to retain position while pursuing court appeal and requiring agency to allow leave time if appeal successful, implemented by this regulation, will increase costs to state agencies depending on the number of such appeals.
(b) Reporting and paperwork requirements: Same as under previous regulations.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Not possible to project increased costs at this time.
1. First year: See above
2. Continuing costs or savings: See above
3. Additional factors increasing or decreasing costs: Provisions of SB 340 requiring two (2) hearing examiners in each appeal and that a decision be made only after a hearing, implemented by this regulation, will substantially increase costs.
(b) Reporting and paperwork requirements: Increased volume of paperwork, due to circumstances described under (2)(a)3 above.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:370. Employee grievances.

RELATES TO: KRS 18A.075, 18A.0751
PURSUANT TO: KRS Chapter 13A, 18A.075
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service providing for establishment of a plan for resolving employee grievances and complaints. This regulation is to implement these statutory provisions and to assure a uniform and effective procedure for hearing and acting upon such grievances.

Section 1. General Provisions. (1) A grievance is a complaint filed by an employee which concerns some aspect of his conditions of employment over which his cabinet or agency has control and which has occurred or of which the employee has become aware, through the exercise of due diligence, within thirty (30) days prior to filing.

(2) Any employee in the classified service who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this procedure.

(3) Any employee in the classified or unclassified service and any applicant or eligible who is required by 101 KAR 1:350 to file a grievance prior to filing an appeal to the Personnel Board concerning an action may file a grievance in accordance with this procedure.

(4) Any grievance concerning an action which is appealable directly to the board pursuant to 101 KAR 1:350 may also be filed in accordance with this procedure, but the filing of a grievance will not prohibit the employee from filing an appeal to the board and will not extend the thirty (30) day appeal period.

(5) Employees using this procedure shall be entitled to file their grievances without interference, coercion, discrimination or reprisal.

(6) Appointing authorities shall inform all employees of the provisions of this regulation and of any modifications approved by the Personnel Board pursuant to Section 3 of this regulation.

(7) The Commissioner of Personnel shall make available to the employees, through the appointing authorities, a uniform grievance form to be used for the filing of a grievance. The form shall contain a notice in bold print that, if the grievance concerns an action appealable directly to the board pursuant to 101 KAR 1:350, the employee's right to file an appeal with the Personnel Board is not extended beyond the thirty (30) day appeal period or otherwise affected by the filing of a grievance.

Section 2. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action which is the subject of the grievance. For purposes of this subsection, a grievance by an applicant or eligible pursuant to 101 KAR 1:350, Section 13, shall be filed with the personnel officer of the agency responsible for the action which is the subject of the grievance.

(2) The employee shall set forth in writing the basis of his complaint, any factual allegations to be investigated, and the corrective action or settlement desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance. The grievance may include a request that an investigation be carried out without delay. Any such requested investigation shall be conducted promptly, orderly and fairly.

(3) When a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, handicap or age (forty (40) through seventy (70)), the recipient must immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Any interviews to evaluate or investigate the grievance that are needed with the grievant at the request of the appointing authority outside of normal work hours shall entitle the grievant to compensatory time, provided the grievant is still actively employed by the cabinet or agency.

(5) Any interviews to evaluate or investigate the grievance that are held at the request of the appointing authority with the grievant or with other employees shall not require the use of leave time.

(6) The grievant may have a representative present at each step of the grievance procedure.

Section 3. Grievance Levels. (1) The immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) working days after receipt of the grievance. If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(2) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) working days after receipt of the grievance. If the second line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(3) The third line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) work days after receipt of the grievance. If the third line is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the fourth line supervisor.

(4) The fourth line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within a period of five (5) work days after receipt of the grievance.

(5) If the fourth line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may appeal the grievance within two (2) work days of receipt of the decision to the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final

determination in writing to the employee within a period of ten (10) work days.

(6) The final determination of the appointing authority concerning any matter required by 101 KAR 1:350 to be filed under the grievance procedure may be appealed by the employee to the Personnel Board within thirty (30) days of receipt of the final determination, excluding the day the final determination is received. An appeal form shall be attached to the final determination of the appointing authority.

(7) Modification of the procedures set forth above may be made upon approval of the Personnel Board to accommodate organizational structure within a cabinet or agency.

(8) Failure by the agency to respond in the prescribed time limits automatically advances the complaint to the next appeal level, unless such time limits have been extended by agreement of the parties.

(9) Any intermediate grievance level may be waived by written agreement of the parties.

PHILIP TALIAFERRO, Chairman

APPROVED BY AGENCY: July 11, 1986

FILED WITH LRC: July 15, 1986 at 9 a.m.

PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: Not possible to project any increased costs at this time.

1. First year: See above

2. Continuing costs or savings: See above

3. Additional factors increasing or decreasing costs (note any effects upon competition): Amount of cost depends on number grievances filed.

(b) Reporting and paperwork requirements: Same as under previous regulations.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No appreciable change.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: New form to be utilized for filing grievances.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: May conflict with administrative regulations covering the same subject matter promulgated by other administrative bodies.

(a) Necessity of proposed regulation if in conflict: KRS 18A.0751 specifically directs the Personnel Board to promulgate comprehensive administrative regulations on this subject matter.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No. KRS 18A.0751 specifically provides that no other administrative body shall promulgate administrative regulations on this subject matter.

(6) Any additional information or comments: None

Tiering:

Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:380. Personnel Board investigations.

RELATES TO: KRS 18A.075, 18A.0751

PURSUANT TO: KRS Chapter 13A, 18A.075

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to make investigations concerning the enforcement and effect of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the Personnel Board shall promulgate such administrative regulations consistent with KRS Chapter 18A as may be proper and necessary for its enforcement. This regulation is to implement these statutory provisions and to provide uniform guidance to state agencies and employees concerning investigations conducted by the board.

Section 1. General Provisions. (1) Upon petition of a citizen, taxpayer, interested party or employee, the board shall conduct an investigation into any matter concerning the enforcement and effect of KRS 18A.005 to 18A.200 and the administrative regulations promulgated pursuant thereto.

(2) Such petition shall state the reason for the requested investigation including a description of the situation or circumstances involved and an explanation of how such situation or circumstances concerns the enforcement and effect of any statutory or regulatory provision.

(3) A petition requesting an investigation may be held confidential, upon request and approval by the board or upon the board's own motion, pending completion of the investigation.

(4) The board upon its own motion may conduct an investigation into any matter concerning the enforcement and effect of KRS 18A.005 to 18A.200 and the administrative regulations promulgated pursuant thereto. The board shall make such investigations as may be requested by the Governor or the General Assembly and report thereon.

(5) The board, any member of the board, and the executive director and any hearing officer of the board may subpoena witnesses and compel the production of documents or other records pertinent to any investigation.

(6) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by such an investigation and such information shall be presented at the hearing.

Section 2. Preliminary Investigation. (1) Any

investigation initiated by petition or upon the board's motion shall be assigned to an investigative examiner for review and preliminary investigation. An investigative examiner may be a hearing officer or the general counsel or the executive director of the board or a member of the board.

(2) The investigative examiner shall review the petition and shall require the testimony of such witnesses and the production of such documents or other records as he deems necessary.

(3) Following his review and preliminary investigation, the investigative examiner shall prepare a report, including such findings as are appropriate, for the board's review.

(4) Upon review of the investigative examiner's report, the board may adopt the report and close the investigation, set the matter for an investigative hearing, direct the investigative examiner to conduct an additional investigation, or take such other action as it deems appropriate.

Section 3. Investigative Hearing. (1) Upon review of the investigative examiner's report, or upon its own motion, the board may direct that an investigative hearing concerning the matter by scheduled.

(2) An investigative hearing shall be scheduled and conducted, as appropriate, in accordance with the provisions of 101 KAR 1:360.

(3) Any employee or appointing authority substantially affected by the report of the investigative examiner shall be entitled to participate in the investigative hearing. Participation shall include the right to representation by counsel, the right to cross examine witnesses and present witnesses in their own behalf, and to submit documents or other records as evidence.

(4) Following completion of the investigative hearing, the board shall enter an order containing finds of fact and recommendations. As directed by the board, the order shall be prepared and transmitted by the executive director to the parties.

PHILIP TALIAFERRO, Chairman

APPROVED BY AGENCY: July 11, 1986

FILED WITH LRC: July 15, 1986 at 9 a.m.

PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: No appreciable change.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No appreciable change.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD

101 KAR 1:390. Restoration from military duty.

RELATES TO: KRS 61.371 to 61.379

PURSUANT TO: KRS Chapter 13A, 61.379

NECESSITY AND FUNCTION: KRS 61.379 directs the Personnel Board to adopt regulations to carry out the provisions of KRS 61.371 to 61.379. This regulation is to implement these statutory provisions.

Section 1. Restoration from Military Duty. (1) Any public employee, as defined in KRS 61.371(1), who meets the requirements of KRS 61.373 shall be restored to his former position or a position of like status and pay within sixty (60) days after written application.

(2) If the employee is physically qualified to perform the duties of his former position, he shall be restored to such position if it exists and is not held by an employee with greater seniority, otherwise to a position of like seniority, status and pay.

(3) If the employee is not qualified to perform the duties of his former position by reason of disability sustained during such military service, he shall be placed in another position, the duties of which he is qualified to perform and which will provide him like seniority, status, and pay or the nearest approximation consistent with the circumstances of his case.

(4) An employee restored to a position in accordance with this regulation shall not be discharged without cause within one (1) year after his restoration.

(5) An employee restored to a position in accordance with this regulation shall be restored without loss of seniority, as provided in KRS 61.375.

(6) If restoration of an employee under this regulation displaces an employee with less seniority who is occupying that employee's former position, statutory and regulatory provisions relating to layoff and re-employment shall apply.

(7) Leaves of absence to permit induction into military service shall be granted in accordance with KRS 61.377(8).

(8) If an employee advises his employer that he is leaving his position to perform military duty, the employer shall advise the employee in writing of his rights under KRS 61.371 to 61.379.

Section 2. Appeal to the Personnel Board. (1) A public employee who is not restored to a position within sixty (60) days after written application may appeal to the board within thirty (30) days after this sixty (60) day period.

(2) Any public employee who is discharged without cause within one (1) year after restoration may file an appeal to the board within thirty (30) days of the effective date of discharge.

(3) Appeals filed pursuant to this section shall be in accordance with 101 KAR 1:350.

(4) Appeals filed pursuant to this section shall be heard by the board in accordance with 101 KAR 1:360.

(5) In the case of any employee who is entitled to be restored to a position in accordance with KRS 61.371 to 61.379, if the Personnel Board finds that the department or agency with which such person was employed immediately prior to his military duty is no longer in existence and its functions have not been transferred to any other agency or that for any reason it is not feasible for such person to be restored to employment by the department or agency, the board shall determine whether or not there is a position in any other department or agency of the same public employer for which the person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the board determines that there is such a position, the person shall be restored to the position by the department or agency in which the position exists.

(6) If the board finds that the employer has violated the provisions of KRS 61.371 to 61.379 or this regulation, it shall direct the employer to comply with the provisions and to compensate the employee for loss of pay suffered by reason of the violation in accordance with KRS 61.379.

PHILIP TALIAFERRO, Chairman
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 15, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: Public hearing on this regulation is scheduled for August 21, 1986, at 9:30 a.m. in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All public employers.
(a) Direct and indirect costs or savings to those affected: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No appreciable change.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. This regulation must apply equally to all public employers.

DEPARTMENT OF PERSONNEL

101 KAR 2:005. Repeal of previous regulations.

RELATES TO: KRS 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.110 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 1:010, Definitions; 101 KAR 1:020, General provisions; 101 KAR 1:030, Personnel Board procedures; 101 KAR 1:040, Classification plan; 101 KAR 1:051, Compensation plan; 101 KAR 1:060, Application and examinations; 101 KAR 1:070, Registers; 101 KAR 1:080, Certification and selection; 101 KAR 1:090, Types of appointments; 101 KAR 1:100, Probationary period; 101 KAR 1:110, Promotion, transfer, demotion, and detail to special duty; 101 KAR 1:120, Separations and disciplinary actions; 101 KAR 1:130, Appeals; 101 KAR 1:140, Service regulations; 101 KAR 1:145, Employee evaluation plan; 101 KAR 1:150, Incentive programs; 101 KAR 1:160, Merit system; and, 101 KAR 1:170, Employee grievances.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:010. Definitions.

RELATES TO: KRS 18A.005
PURSUANT TO: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, as they relate to the classified service. This regulation is necessary to define key terms used in the regulations which may not be defined in KRS Chapter 18A.

Section 1. The following words and phrases when used in these regulations have the following meanings unless otherwise clearly indicated in the context:
(1) "Commissioner" means the Commissioner of the Department of Personnel as provided for in KRS 18A.015;
(2) "Board" means the Personnel Board created by KRS 18A.045;
(3) "Appointing authority" means the agency head or any person whom by law he has authorized to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position and personnel actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the commissioner.
(4) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS Chapter 18A. Base salary or wages shall be increased when an employee receives any increment due to a promotion, reallocation, reclassification, salary adjustment, or probationary and annual increment. The employee's base salary or wages shall be increased by the amount of such increment.
(5) "Appeal form" means the form prescribed by the Personnel Board which is to be used in filing appeals to the board.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: No costs or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:020. Classification plan.

RELATES TO: KRS 18A.005, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the classification plan for all positions in the classified service so that the same qualifications may reasonably be required for and the same schedule of pay equitably applied to all positions in the same job classification. This regulation is to assure uniformity and equity in administering the plan, in accordance with requirements of the statutes.

Section 1. Preparation of Plan. The commissioner shall prepare and maintain a comprehensive position classification plan for classified state employees. The plan shall be based on investigation and analysis of all the duties and responsibilities assigned to each position, and each position shall be allocated to its proper job classification in the classification plan after consultation with appointing authorities. When complete, the classification plan shall include for each job classification an appropriate title and a class specification, including characteristics of the class, examples of duties and responsibilities, and the required education, experience and other qualifications. The plan shall be reviewed at least once every four (4) years.

Section 2. Allocation of Positions. (1) Every position shall be allocated to the appropriate job classification by the commissioner, after consultation with appointing authorities and consideration of their recommendations. Every position shall be placed in a specific job classification before final administrative action can be taken on appointments, transfers, promotions, changes in pay-grade status, or payment of salary involving the position. Such allocations become effective only after written approval of the commissioner.

(2) Those positions which are sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and which merit approximately equal pay shall be allocated to the same job classification.

(3) The commissioner shall allocate new positions to the proper job classification upon receipt of the prescribed forms of statements of duties, responsibilities and requirements of such positions from the appointing authority.

(4) The commissioner shall reallocate existing positions when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The correction of the classification of an existing position by placement of the position into the job classification that is appropriate for the duties the employee has been and shall continue to perform is known as a reallocation. In all cases of reallocation, the employee in the position when it is reallocated shall serve therein with the corresponding status that he had before the position was reallocated.

(a) The appointing authority shall notify an employee in writing whose position is reallocated of the reallocation, of the reasons therefor, and of his right to request reconsideration by the commissioner within ten (10) working days of receipt of the notice, excluding the day he receives notification. A copy of the form for requesting reconsideration shall be attached to the notice.

(b) An employee who files a written request for reconsideration of the reallocation of his position with the commissioner shall be given a reasonable opportunity to be heard. The commissioner shall make a determination within sixty (60) days after the request has been filed by an employee. Such determination shall be in writing an shall advise the employee of the reason therefor. A copy of the appeal form shall be attached to the determination. An employee may appeal the determination of the commissioner to the board in accordance with 101 KAR 1:350.

(5) The commissioner shall change the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs. This type of action is known as reclassification. In all cases of reclassification, the employee shall serve with the corresponding status he had before he was reclassified, providing he meets the qualification requirements for the job classification to which he is reclassified. Where a reclassification diminishes the salary range or level, rank, discretion, or responsibility as defined by the class specifications involved, the appointing authority shall notify the employee, in writing, of the reclassification and the reasons therefor. A copy of the appeal form shall be attached to the notice. An employee may appeal such reclassification in accordance with 101 KAR 1:350.

Section 3. Interpretation of Class Specifications. (1) Class specifications are descriptive and explanatory. They are designed to indicate the kinds of positions which should be allocated to the various job classifications as determined by their characteristics and duties or responsibilities.

(2) Characteristics of a class are general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities are not to be construed as describing what the duties or responsibilities of any position shall be and are not to be construed as limiting the appointing authorities' ability to take, add to, or otherwise alter the duties and responsibilities of a position. The use of an individual expression or illustration as to duties or responsibilities shall not be regarded as excluding assignment of others not mentioned which are of similar kind or quality.

(4) Minimum requirements are comprehensive statements of the minimum background as to education, experience and other qualifications which will be required in all cases as evidence of an appointee's ability to perform the work properly.

Section 4. Official Copy of Class Specifications. (1) The Department of Personnel shall maintain a master set of all approved class specifications. Such specifications shall constitute the official class specifications in

the classification plan. The copies of the specification for each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The Department of Personnel shall provide each appointing authority with a set of the class specifications of those job classifications to which positions in his department are allocated and such other job classifications as it sees fit. Class specifications shall be available for inspection by any employee or the public under reasonable conditions during business hours.

Section 5. Title of Position. The title of the job classification to which a position has been allocated shall be used to designate such position in all budget estimates, payrolls and other official records, documents, vouchers, and communications in connection with all personnel processes. For purposes of internal administration or for any other purposes not involving the personnel processes, any office title, abbreviation, or code symbol may be used in lieu of the class title.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and all state agencies under the classified service covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: Minimal cost.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: No cost or saving.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:030. Compensation plan.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
PURSUANT TO: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, and after conducting wage and salary surveys of relevant labor markets, the commissioner shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity and external market competitiveness. The plan shall provide pay grades or specific salary rates as appropriate for the various job classifications. Each job classification shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for job classifications shall be consistent with the functions outlined in the classification plan. Amendments to the pay plan shall be made in the same manner.
(2) The plan shall take into account such factors as:
(a) The relative levels of duties and responsibilities of various job classifications;
(b) Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
(c) The state's financial resources.
(3) Each employee shall be paid in accordance with the pay grade or salary rate set forth in the pay plan for the job classification in which he is employed.
(4) The plan shall be reviewed annually.

Section 2. Appointments. Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and/or experience over and above the minimum requirements set for the job classification. Such additional qualifications must be in the same or related area of the job duties of the position to which the appointment is to be made. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same

county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 3. Re-entrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place re-employed, reinstated, and former employee probationarily appointed at a salary:

(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;

(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;

(c) In accordance with the standards used for making new appointments; or

(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by lay-off and who are reinstated or re-employed in the same or a similar job classification within five (5) years from the date of lay-off may receive the salary they were receiving at the time of lay-off, even if such salary is above the maximum of the pay grade.

(3) Former employees re-employed, reinstated or probationally appointed to a salary:

(a) Below the midpoint of the pay grade shall be considered for a probationary increment at the time of completion of the probationary period;

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of re-employment, reinstatement or appointment.

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

(2) Demotion. An employee who is demoted may have his salary changed to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070, Section 9, may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary changed to the rate received at the time he left the classified service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class re-evaluation and grade adjustment under Section 9 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a salary adjustment not to exceed ten (10) percent when standards of internal equity justify such an adjustment.

(c) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 9(3) of this regulation.

(d) Inasmuch as the appointing authority has the option of not providing salary adjustments under this subsection, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

Section 5. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted a probationary increment at the beginning of the month following completion of the probationary period, except as specified under Section 3(3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates will be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or re-employment, pursuant to Section 3(3) of this regulation.

(b) When an employee returns from leave without pay pursuant to Section 5(5) of this regulation.

(3) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

(4) Annual increment. All employees shall receive statutory annual increments on the employee's regularly scheduled increment date. An employee whose annual increment places his salary above the maximum of the pay grade shall have his annual increment added to his base salary or wages. For purposes of calculating the statutory annual increment: Educational achievement awards, employee suggestion systems awards and overtime and/or compensatory leave payments and performance based payments shall not be added to base salary or wages.

(5) Return from leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

(6) Return from military leave. An employee returning to duty from military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received.

(7) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part time to full time, part-time service shall be counted in determining increment eligibility for a full-time employee; in those cases where an employee is changed from full time to part time, full-time service shall be counted in determining increment eligibility for a part-time employee.

Section 6. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent, full-time employee with status may receive a lump sum educational achievement award for either:

(1) Satisfactorily completing 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction. The lump sum educational achievement award in this instance shall be ten (10) percent of the employee's annual base salary. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving a high school diploma or GED Employees receiving either a high school diploma or GED shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary.

The lump sum payment shall not be added to the employee's base salary or wages.

Section 7. Employee Suggestion Award. An employee may receive a lump sum payment employee suggestion award in accordance with 101 KAR 2:120. Such lump sum payment shall not be added to the employee's base salary or wages.

Section 8. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such increase shall be determined by the commissioner and shall be uniform for all eligible employees.

Section 9. Class Re-evaluation and Grade Adjustment. (1) Class re-evaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 9(1) of this regulation, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 4(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class re-evaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 10. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and 101 KAR 3:010, Section 4, and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime

payments shall not be added to base salary or wages.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: Minimal cost.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: No cost or saving.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:040. Applications and examinations.

RELATES TO: KRS 18A.030, 18A.110, 18A.120
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110, 18A.150
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the commissioner. This regulation is necessary to implement these statutory requirements and to assure uniformity in administering exams.

Section 1. Notices of Examinations. Examinations for entrance to the classified service shall be conducted on an open-competitive basis. For those job classifications in which there is expected to be a considerable and recurring need of eligibles, the commissioner shall establish a recruitment program which shall be both positive and continuous. Under such plan, applications may be accepted at any time and examinations held whenever and wherever the commissioner deems it desirable for the service. For those job classifications for which continuous recruitment is not needed, special announcements will be used. Eligibles will be listed in rank order irrespective of dates on which the examination was taken. Notice of examinations shall be announced publicly fifteen (15) days prior to opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient. The public notice of examination shall specify the title and minimum salary of the job classifications; the minimum qualifications required; the final date on which application will be received; the relative weights to be assigned to different parts of the examination; and all pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the commissioner with regard to education, experience, age, physical condition, and such other factors as may be held to relate to the ability of the candidate to

perform with reasonable efficiency the duties of the position.

Section 3. Previous Experience. In determining whether a state employee meets the minimum requirements for experience required for a job classification, the department shall, in counting state service experience, consider only experience gained during permanent full-time employment.

Section 4. Filing Applications. (1) All applications shall be made on forms prescribed by the commissioner. Such application may require information concerning personal characteristics, education, experience, references, and other pertinent information. When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement. All applications shall be signed and the truth of the statements contained therein certified by such signatures. Applicants must meet the minimum qualifications specified in announcements as to education and experience, but in no case shall admittance to the examinations constitute assurance of a passing grade.

(2) For those job classifications for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

(3) For those job classifications for which continuous recruitment is not needed, special announcement bulletins will be used. Applicants shall have fifteen (15) calendar days to apply for these special openings. The applications will be processed and those applicants who meet the minimum requirements will be notified of the testing dates.

Section 5. Disqualification of Applicants. The commissioner may refuse to examine an applicant, or, after examination, may disqualify such applicant, remove his name from a register, refuse to certify any eligible on a register or may consult with the appointing authority in taking steps to remove such person already appointed if:

(1) It is found that he does not meet any one of the preliminary requirements established for the examination for the class of position;

(2) He is unable to perform the duties of the class;

(3) He has made a false statement of material fact in his application;

(4) He has used or attempted to use political pressure or bribery to secure an advantage in the examination;

(5) He has directly or indirectly obtained information regarding the examination to which, as an applicant, he was not entitled;

(6) He has failed to submit his application correctly or within the prescribed time limits;

(7) He has taken part in the compilation, administration, or correction of the examination for which he is an applicant;

(8) He has previously been dismissed from a position in the state service for cause or has resigned while charges for dismissal for cause of which he had knowledge were pending;

(9) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the governor;

(10) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification; or

(11) He has otherwise willfully violated the provisions of KRS Chapter 18A.

Section 6. Advance Examinations. Any applicant who does not meet minimum requirements as to education but who will meet these requirements as a result of the completion of further educational work which he has scheduled for the six (6) months following the date of receipt of application, may be allowed to take the examination at the discretion of the commissioner. An applicant taking the examination under this provision shall have his or her name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 7. Character of Examinations. Examinations shall be practical in nature, constructed to reveal the capacity of the candidate for the particular job classification for which he is competing and his general background and related knowledge, and shall be rated impartially. The commissioner may use a rating of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness which in his judgement serves the need to discover the relative fitness of applicants.

Section 8. Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) The commissioner may designate monitors in various parts of the Commonwealth to take charge locally of examinations under instructions prescribed by him, provide for the compensation of such monitors, and make arrangements for the use of public buildings in which to conduct the examinations.

(3) Retest procedures.

(a) For open continuous testing an applicant may be admitted to the same exam or its alternate no more than two (2) times within a regular workweek.

(b) For open continuous testing an applicant shall not be permitted to take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date such test is taken.

(c) Retest procedures for examinations listed on special announcements shall be stated on the bulletin.

Section 9. Rating Examinations. The commissioner shall determine the rating or standing of applicants on the register for all examinations. Such final rating shall be based upon a weighted average of the various parts of the total examination. All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 10. Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the

commissioner shall determine a procedure for the evaluation of the education and experience qualifications of the applicants. The formula used in appraisal shall give due regard to recency and quality as well as quantity of experience and the pertinency of the education.

(2) The commissioner shall investigate the candidate's educational record form. The commissioner may investigate the candidate's work history. If the results of this investigation bring out information affecting the rating of education and experience, the commissioner may rate the candidate accordingly or make the necessary revision of the rating and so notify the candidate.

Section 11. Oral Examinations. When an oral examination forms a part of the total examination for a position, the commissioner shall appoint one (1) or more oral examination panels as needed. An oral examination panel shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined. Whenever practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel. A member of an oral examination panel shall disclose each instance in which he knows the applicant personally and may refrain from rating such applicant.

Section 12. Notice of Examination Results. Each competitor shall be notified of his final rating as soon as the rating of the examination has been completed. Eligibles shall be entitled to information concerning their relative position on the register upon request and presentation of proper identification.

Section 13. Adjustment of Errors. An error in the rating of an examination, if called to the attention of the commissioner within thirty (30) days after receipt by the applicant of the notice of examination results shall be corrected by the commissioner provided, however, that such corrections shall not invalidate any certification and appointment previously made.

Section 14. Special Examinations. Except in the case of an error in the examining of an applicant, no applicant shall be given a special examination unless the board by formal recorded action finds that the applicant's failure to take or complete an examination was due to circumstances entirely beyond the control of the applicant. The board's findings and recommendations shall be recorded in its minutes. No claim for a special examination shall be allowed unless it is filed in writing with the board within fifteen (15) days after the date of the original examination. Any special examination shall be constructed on a pattern similar to, and as extensive as, the original examination. Any such special examination shall not invalidate any certification or appointment previously made.

Section 15. Examination Records. The commissioner shall be responsible for the maintenance of all records pertinent to examination programs. Applications and other necessary examination records shall be kept during the life of the register.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: Minimal cost.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal additional cost.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings: No cost or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: Minimal.
(b) Reporting and paperwork requirements: Minimal additional paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:050. Registers.

RELATES TO: KRS 18A.005, 18A.110, 18A.120
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.040, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter

18A, which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the commissioner. This regulation is necessary to comply with these statutory requirements.

Section 1. Responsibility for Maintenance of Registers. It shall be the duty of the appointing authorities to notify the commissioner as far in advance as possible of vacancies in full-time or part-time classified positions which may occur in the agencies. The commissioner shall be responsible for the establishment and maintenance of appropriate registers for all full-time or part-time classified positions and for the determination of the adequacy of existing registers.

Section 2. Open-Competitive Registers. After each open-competitive examination, the commissioner shall prepare a register of persons with passing grades seeking employment in a full-time or part-time classified position. The names of such persons shall be placed on the register in the order of their final ratings, starting with the highest. Registers for job classifications listed on the special announcement bulletins shall be filled no sooner than five (5) days after the final testing date.

Section 3. Use of Related Registers. If a full-time or part-time vacancy exists in a job classification for which there is no appropriate register, the commissioner may prepare a full-time or part-time register for the job classification from one (1) or more existing related registers. The commissioner shall select registers from job classifications for which the minimum qualifications are comparable to or higher than those required for the job classification in which the vacancy exists. The commissioner may, if appropriate, re-rate training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 4. Duration of Registers. (1) A register shall expire automatically at the end of two (2) years from the time of its establishment unless the register is extended by the commissioner for a period not to exceed one (1) additional year or terminated by the commissioner.

(2) The life of registers for job classifications for which continuous recruitment and examination is conducted shall be indefinite but may be terminated by the commissioner. The names of eligibles shall be added to and removed from such registers on a continuous basis. Normally, the name of an eligible shall not remain on a register for a job classification in the continuous program for longer than two (2) years from the date of its entry on the register. Whenever the name of an eligible is removed from a register, the eligible shall be notified in writing.

(3) When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the job classification is impracticable, the register will be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 5. Replenishment of Registers. If the commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register.

Section 6. Removal of Names from the Register. (1) Reasons for removal. The commissioner may, on receipt of authoritative information, remove the name of an eligible from the appropriate full-time or part-time register:

(a) If the eligible cannot be located by postal authorities at the last address provided by the eligible;

(b) If the eligible responds in writing that he no longer desires consideration for position in that class;

(c) If the eligible declines an offer of probationary appointment to the class for which the register was established;

(d) If it is shown that the eligible is not qualified or is unsuitable for appointment to the class for which the register is established;

(e) If the eligible fails to reply within a period of ten (10) calendar days of the receipt of the written request of the appointing authority for an interview, or fails to appear for an interview which he has scheduled with the appointing authority without good cause;

(f) If the eligible accepts an appointment and fails to present himself for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority; or

(g) If the eligible states in writing that he is not available for appointment or does not wish to be considered for appointment.

(2) The names of eligibles who have been considered for a probationary full-time or part-time appointment three (3) times by any one (1) or more appointing authorities and have not been offered employment may be removed from a full-time or part-time register if it is determined they would not be suited to the type of work found in the class for which the register is established.

(3) When the Department of Personnel is authoritatively notified that an eligible has accepted a bona fide offer of probationary appointment to any full-time or part-time classified position, effective on a specified date, his name may be removed from the registers for all classes for which the maximum salary is the same or less than that of the class to which he has been appointed.

(4) Whenever an eligible's name is removed from a full-time or part-time register for reasons cited in subsections (1), (2) and (3) of this section, the commissioner shall notify, in writing, the eligible of this action and the reasons therefor, together with his right of appeal to the board pursuant to 101 KAR 1:350. A copy of the appeal form shall be attached to the notice. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the commissioner or in accordance with the decision of the board upon

appeal.

(5) Whenever an eligible notifies the Department of Personnel in writing that he is unavailable for employment or employment consideration, the department may remove the name of that eligible from the appropriate full-time or part-time register without further notification to the person.

Section 7. Promotional Register. At the request of the appoint authority, the commissioner shall prepare a register of status employees interested in promotion to a full-time or part-time classified position who meet the minimum requirements and has obtained a passing grade on the competitive promotional examination. The names of such employees shall be placed on the register in the order of their final ratings, starting with the highest. The register shall be certified to agencies for their consideration in filling vacancies from a promotional register.

Section 8. Full-Time or Part-Time Re-employment Registers. The commissioner shall prepare re-employment registers in accordance with 101 KAR 1:330, Section 5.

Section 9. Cooperation with Other Merit Systems. The commissioner may cooperate with the governmental agencies of other jurisdictions whose merit systems operate in conformity with standards comparable to those contained in these regulations. The commissioner may announce and administer joint examinations and establish joint lists from which eligibles shall be certified for appointment in accordance with the provisions of these regulations.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:060. Certification and selection of eligibles.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacancy by selection of an eligible from a register established on the basis of an open-competitive examination, the appointing authority shall submit a request for certification to the commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. (1) Upon receipt of a requisition, the commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the appointment. If one (1) position is involved, he shall certify and submit from the register for that job classification the names of the persons whose scores are included in the highest five (5) scores earned on the examination, providing the commissioner shall fix a reasonable maximum number of eligibles certified. If more than one (1) vacancy is involved, either in one (1) or more agencies, the commissioner shall certify sufficient additional names for the agencies' consideration in filling the total number of

vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. If the register, established as a result of the open-competitive examination for a specific class, is exhausted, the commissioner shall certify and submit names in accordance with the above procedure in accordance with 101 KAR 2:050, Section 3. The life of a certificate during which action may be taken shall be forty-five (45) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

(2) Any employee who has been dismissed for cause or who has resigned while charges for dismissal for cause were pending and who seeks further employment with the state shall not be certified to the agency from which separated unless the agency requests such certification.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the commissioner.

Section 4. Selective Certification. (1) The appointing authority may specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority may specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(3) To facilitate the employment of participants in employment programs authorized by federal or state law where the participants are employees of state agencies, the appointing authority may specify in writing that participation in such a program be required for a position. If, after investigation, the commissioner finds that such action is necessary to facilitate the career employment of participants in such a program, the commissioner may certify in order of rank on the register, the names of those persons who have been participants for at least six (6) months in such programs. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

Section 5. Selection. (1) Written inquiry as to availability must be sent to each eligible certified for appointment unless it is impractical to do so, except that evidence of having sent a written notice to each eligible reported as having failed to reply to the inquiry or unavailable for appointment must be submitted with a report of action on a certification. All supporting documentation of negative action must accompany the returned register certificate.

(2) In making appointments from the open-competitive register, the appointing authority shall select for each position a person whose score is included in the five (5) highest scores, exclusive of the names of those persons:

(a) Who decline appointment or request that they not be considered for appointment;

(b) Who fail to reply within a period of ten (10) calendar days to the written request of the appointing authority for an interview or who do not arrange to report for such an interview within a reasonable time, or who fail to appear for an interview which they have arranged with the appointing authority;

(c) Who accept an appointment and fail to present themselves for duty at the time and place agreed to without giving reasons for the delay satisfactory to the appointing authority;

(d) To whom the appointing authority offers an objection in writing based on 101 KAR 2:040, Section 5, which objection is sustained by the commissioner;

(e) Who are not available for appointment.

(3) The final selection by the appointing authority shall be reported in writing to the commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the commissioner the non-availability of any eligibles passed over for that reason.

(4) If, in the exercise of his choice, the appointing authority passes over the name of an eligible on a register in connection with three (3) separate appointments which he has made from the register, written request may be made of the commissioner that the name of such eligible be omitted from any subsequent certifications from the same register to the same appointing authority. This request must contain sufficient evidence to indicate the eligible's unsuitable characteristics for an appointment in the job classification for which the register was established. If the commissioner approves such request, either the name of such eligible shall not thereafter be certified to him from that register for other vacancies in that class, or his name will be removed from this register.

Section 6. Certification from the Promotional Register. Whenever a vacancy is to be filled

from a promotional register established as a result of a competitive examination, the commissioner shall certify the names of eligibles in accordance with 101 KAR 2:050, Section 7.

Section 7. Certification of Names from the Re-employment Register. Whenever a vacancy is to be filled from a re-employment register, the commissioner shall certify the names of eligibles in accordance with 101 KAR 1:330, Section 5.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:070. Types of appointments and detail to special duty.

RELATES TO: KRS 18A.005, 18A.110, 18A.115, 18A.120
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the various types of appointments, such as probationary, emergency, provisional, reinstatement, and for such other regulations, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This regulation is necessary to comply with these statutory requirements.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, re-employment, reinstatement, emergency appointment or provisional appointment.

Section 2. Probationary Appointment. The appointment to a permanent position in the classified service through certification in accordance with 101 KAR 2:060 from an open-competitive register shall constitute probationary appointment.

Section 3. Provisional Appointment. When a vacancy is to be filled in a position of a job classification for which there are less than three (3) eligibles available for certification, the appointing authority, with the prior approval of the commissioner, may make a provisional appointment to fill the position. A provisional appointee must be certified by the commissioner as meeting at least the minimum qualifications established for the class of position. No such provisional appointment shall be continued longer than six (6) months nor shall successive provisional appointments of the same person be made to the same position.

Section 4. Emergency Appointment. The appointment of an employee without regard to the examination requirements of these regulations to any position by reason of a governmental emergency shall constitute an emergency appointment. An emergency appointment may not exceed thirty (30) working days in duration and is non-renewable. Emergency appointments shall have the prior consent of the commissioner.

Section 5. Temporary Appointments. The appointment of a person to a temporary position shall constitute a temporary appointment. Such appointments shall be subject to the prior approval of the commissioner. Each appointee must be approved by the commissioner as meeting at least the minimum qualifications established for the job classification. Such appointment shall be for a specified period of time not to exceed six (6) months and shall not be renewable.

Section 6. Re-employment. An employee who has been laid off may be re-employed in accordance with 101 KAR 1:330, Section 5.

Section 7. Reinstatement. An employee who has

resigned in good standing or who has been ordered reinstated by the board or a court to a position in his former class or a position of like status and pay may be reinstated in accordance with 101 KAR 1:330, Section 4.

Section 8. Seasonal Appointment. The appointment of a person to a position that is temporary, that coincides with a particular season or seasons of the year, and that does not exceed eleven (11) months duration shall constitute a seasonal appointment. The applicant must meet the established minimum requirements for the position. Such appointments shall be subject to the prior approval of the commissioner.

Section 9. Detail to Special Duty. When the services of a permanent employee are needed in a position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the commissioner. For detail to special duty the commissioner may waive the minimum requirements when requested by the appointing authority in writing.

Section 10. Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes or in the best interest of the state service, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:080. Layoffs.

RELATES TO: KRS 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A which govern layoffs. This regulation is necessary to comply with the statutory requirement.

Section 1. General Provisions. (1) Employees in the classified service may be laid off by reason of abolishment of position, lack of work or a material change in duties or orgainzation; or by reason of a projected or actual reduction in tax receipts as comtemplated by KRS 18A.1131 and 1132.
(2) It shall be unlawful to coerce employees who may be or are subject to layoff to resign or retire in lieu of layoff. Layoffs shall not be utilized as a method of dismissal.
(3) In the same cabinet, county and job classification, provisional, temporary, emergency, federally funded time-limited, and probationary employees shall be laid off before permanent full-time or permanent part-time employees with status. For purposes of layoff, probationary employee does not include an employee with status serving a promotional probatioary period. A cabinet shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.
(4) If two (2) or more employees subject to layoff in a layoff plan submitted to the commissioner have the same qualifications, the employee with the lesser seniority shall be laid off first.
(5) An employee who has been laid off may appeal his layoff in accordance with 101 KAR 1:350. The written notice to the employee shall include the reasons for the layoff and shall advise him of his right to appeal. A copy of the appeal form shall be attached to the notice. The appointing authority shall conduct a personal interview with each laid-off employee to explain the re-employment rights available to that employee unless circumstances prevent such an interview; in which case such circumstances must be detailed in writing to the commissioner.

Section 2. Implementation of Layoff Plan. (1) A layoff of an employee due to the abolition of

a position, lack of work or a material change in duties or organization shall comply with the provisions of this section.

(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the commissioner and the Secretary of the Finance and Administration Cabinet for their approval. Such plan shall contain the name of the employee, total months of state service for the employee and the reasons, in detail, for such layoff. Upon approval of the plan by the commissioner and the secretary, the employee shall be notified that he is subject to layoff, and of the reason for the layoff, the procedures established by the provisions of KRS Chapter 18A for the layoff of employees and the rights granted employees subject to layoff and to laid-off employees.

(3) An employee subject to layoff shall be transferred to a vacant position of the same pay grade and level of duties and responsibilities for which he is qualified within the cabinet. Such position shall be located in the same county as the position from which the employee is subject to layoff.

(a) If such a vacancy does not exist, the employee shall be transferred to a vacant position within the cabinet for which he is qualified. Such position shall be located in the same county as the position from which the employee is subject to layoff.

(b) If such a position is not available, the employee shall be notified of all vacant positions within the cabinet for which he is qualified to take an examination. The employee shall have the right to take an examination for any vacant position within the cabinet for which he is qualified. If he passes the examination he shall be appointed to that position before any applicant or eligible on a register, except another laid-off employee with greater seniority already on such register.

(4) If no position is available to an employee subject to layoff under the procedure established by subsection (3) of this section, the appointing authority shall notify the employee and the Department of Personnel. The Department of Personnel shall coordinate efforts to transfer an employee subject to layoff to another agency. It shall have the authority to transfer an employee subject to layoff under this section, with the approval of the appointing authority of the agency to which the employee is to be transferred.

(5) If no position is available to an employee subject to layoff under the procedure established by subsections (3) and (4) of section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

(6) An employee subject to layoff shall have the right to take an examination for any position for which he is qualified. If he passes the examination he shall be appointed before any applicant or eligible on a register, except a laid-off employee with greater seniority already on such register.

Section 3. Layoffs by Reason of a Projected or Actual Reduction in Tax Receipts. (1) Prior to a layoff required by a projected or actual reduction in tax receipts, each cabinet shall prepare a layoff plan.

(2) Each layoff plan shall provide that a layoff of state employees shall occur only after all other cost saving measures are taken have failed to alleviate the projected or actual deficit. These measures shall be specified in the plan, in detail, and shall include but not be limited to:

(a) A hiring freeze of all types of appointments;

(b) A reduction or delay or expenditures that would not prevent the provision of services required by law;

(c) Consolidaton of offices and job duties that would not prevent the provision of services required by law;

(d) Transfer of funds as provided by the budget reduction plan enacted pursuant to KRS Chapter 48;

(e) Transfer of funds appropriated for or allotted to vacant positions as provided by the budget reduction plan provided for by KRS 48.130, unless it is certified that the positions are essential and cannot be filled in the period during which layoffs are to occur by transfer of existing employees of the appointing authority;

(f) The filling of vacancies and promotions from within the cabinet; and

(g) Transfers of employees within the cabinet as provided by Section 2(3) and (4) of this regulation.

(3) Each cabinet shall submit its layoff plan and a list of employees who would remain subject to layoff after the implementation of cost saving measures to the commissioner and to the Secretary of the Finance and Administration Cabinet for review. Upon approval by the secretary, the layoff plans shall be submitted to the governor for approval.

(4) Upon approval of the plan by the governor, the commissioner shall attempt to transfer employees as provided by Section 2(4)(b) of this regulation. Employees who cannot be so transferred may be laid off.

(5) If no position is available to an employee subject to layoff under the procedures established by this section, the employee shall be notified in writing by the appointing authority that he is to be laid off effective fifteen (15) days after receipt of notice, and of the rights and privileges granted laid-off employees.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating

(1) Type and number of entities affected: All state employees and state agencies covered by

KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting, and paperwork requirements: Minimal increase in paperwork.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:090. Service regulations.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, which govern for the maintenance of employee records, the maintenance of other records and reports in the department, and for other conditions of employment. This regulation is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these regulations, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties.

Section 2. Attendance; Hours of Work. (1) The number of hours full-time employees in state offices in Frankfort are required to work shall be uniform for all positions unless specified otherwise by the appointing authority or the statutes.
(2) The normal work day shall be from 8:00 a.m. to 4:30 p.m., local time, Monday through Friday.
(3) An appointing authority may require and decide employees to work hours and work days other than normal including inclement weather schedules if it is in the best interest of the agency.
(4) Employees who work for agencies which require more than one (1) shift or seven (7) days a week operation may be assigned/reassigned from one shift to another and from one post to another or alternate days off by the agency to meet staffing requirements and/or to maintain security or provide essential services of the agency. The employee is required to give reasonable notice in advance of absence from a work station.

Section 3. Work Station. Each employee shall be assigned a work station by the appointing authority. A work station may be changed to better meet the needs of the agency. An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days, provided that such employee is reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority notifies the employee in writing prior to the effective date of the action.

Section 4. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the commissioner. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

Section 5. Minimum Hiring Age. The minimum age for hiring of state employees shall conform to federal and state labor laws, and administrative regulations.

Section 6. Maximum Hiring Age. (1) The maximum hiring age for permanent employment subject to these regulations is seventy (70).
(2) The appointing authority may request that individuals over seventy (70) be tested and/or employed. The request must be justified in writing by the appointing authority, stating the reasons why it serves the public interest, and must have the prior approval of the commissioner. Applicants so approved shall be certified only to those agencies requesting such waivers.

Section 7. Retirement. (1) The normal retirement age for employees subject to these regulations shall be seventy (70).
(2) Employees over seventy (70) may be allowed to continue employment from year to year with prior approval of the commissioner when it serves the public interest. Such requests must be justified in writing by the appointing authority.
(3) If an employee with status is retired, he is considered as separated without prejudice.

Section 8. Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the

advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 9. Records and Reports. (1) The commissioner shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes as he may require. The commissioner shall inform the appointing authorities which personnel actions and status changes must be reported to him. The appointing authority shall provide a copy of a personnel action form to the employee affected by such action.

(2) The commissioner shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or any other leave with or without pay. Such record shall be documentary evidence to support and justify authorized leave of absence with pay.

(3) The commissioner shall prepare and maintain a record of all employees showing for each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave, annual leave and compensatory leave.

Section 10. Department Records. (1) All records of the department shall be public records and open to public inspection as provided in KRS 61.870 to 64.884.

(2) A personnel file shall be maintained by the department and the appointing authority for each employee. The file maintained by the department shall be the official personnel file for the employee. Upon transfer, the personnel file maintained by the appointing authority from which the employee transfers shall be forwarded to the new appointing authority.

(3) Each file shall include, but not be limited to, for each employee, his name, address, title of positions held, classification, rates of compensation, all changes in status including evaluations, promotions, demotions, layoffs, transfers, disciplinary actions, commendations, awards, and preliminary and other supporting documentation for each action. Each file shall contain the complete record and supporting documentation for each personnel action.

(4) Upon written requrest, on forms prescribed by the commissioner, an employee shall have the right to examine his personnel file. An employee may comment in writing on any item in his file. Such comments shall be made a part of his file and shall be attached to the specific record or document to which they pertain.

(5) Upon written request, on forms prescribed by the commissioner, a state employee, an applicant for employment, and an eligible on a register shall have the right to inspect and to copy any record and preliminary documentation and other supporting documentation that relates to him except that an applicant, an eligible or a state employee shall not have the right to inspect or to copy any examination materials.

(6) No public agency, as defined by KRS 61.870, and no officer or employee shall deny, abridge or impede the exercise of the rights under this section.

(7) Applicants or employees shall be notified in writing within three (3) working days after receipt of a requrest for inspection of any reason the records requested are not available for inspection.

(8) A fee of ten (10) cents a page for copying or a charge equal to the actual cost of producing copies of records will be assessed in accordance with the regulatory provisions promulgated by the Finance and Administration Cabinet.

(9) Records may be inspected from 8 a.m. to 4:30 p.m., Monday through Friday each week except holidays.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating

(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Minimal increase in paperwork.

(2) Effects on the promulgating administrative body: No cost or savings.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal increase in paperwork.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:100. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

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

A full-time employee must have worked more than half of the work days in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

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

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

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

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for accumulated annual leave at the higher rate. The effective date of the separation shall be the last work day. A pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 2(2) of this regulation.

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

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no such position available, the regulations pertaining to layoff apply. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

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

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or re-employed shall have unused sick leave balances revived upon appointment and placed to their credit.

(11) In cases of absence due to illness or injury for which Workers' Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 4. Compensatory Leave. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

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

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off when practicable. To maintain a managable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "non-exempt" shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 6. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 7. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

Section 8. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:110. Employee evaluation plan.

RELATES TO: KRS 18A.030, 18A.110
PURSUANT TO: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations for classified service employees to provide for uniform standards and methods of appraising work performance of all employees, and for the use of such methods of appraisal in personnel actions, and for the development and operation of programs to improve the work effectiveness of employees. This regulation implements such directives by establishing a uniform employee evaluation system.

Section 1. Eligible Employees. (1) Each full-time employee who has completed his initial probationary period of service; each part-time employee who works over 100 hours each month and who has completed his initial probationary period of service; each federally funded, time limited employee who has completed six (6) months service shall have his work performance evaluated on an annual basis, and be eligible for a lump sum performance award, using as a guide criteria developed by the commissioner.
(2) An appointing authority may elect to utilize the standards and methods of appraising work performance promulgated in this regulation for employees who are not eligible to receive a lump sum performance award.

Section 2. Work Performance Evaluation. (1) Each evaluator (the first line supervisor or the person with direct supervisory responsibility over the employee) shall assess employee performance in five (5) categories: job knowledge and skills; quality of work; productivity; improvement in performance; and employee conduct.
(2) Each category shall be assessed as: "exceeding performance requirements," "meeting performance requirements" or "failing to meet performance requirements."
(3) The overall rating shall be determined by the ratings on each of the five (5) job categories.
(4) "Exceeds requirements." The employee shall receive an "exceeds" rating when his job performance exceeds requirements in all five (5) of the job categories.
(5) "Fails to meet requirements." The employee shall receive a "fails to meet" rating when his job performance fails to meet requirements in all five (5) of the job caterogies. The evaluator shall provide the employee with suggestions for improvement and training, as needed.
(6) "Meets requirements." The employee who receives any other combination of ratings on the

job categories shall receive an overall rating of "meets requirements."

Section 3. Procedures for Evaluation of Job Performance. (1) Identification of job duties. At the beginning of the evaluation period, the evaluator shall identify and review the job duties, factors to be evaluated and evaluation criteria with the employee and record the job description on the evaluation form.

(2) Mid-year evaluation. After six (6) months, the evaluator will assess the employee's job performance to date, assign a rating to each job category and determine the overall rating for the mid-year evaluation, discuss the employee's performance with him, and initiate corrective measures, as needed.

(3) Annual final evaluation. A final evaluation shall take place annually. After twelve (12) months, the evaluator shall assess the employee's job performance, considering the ratings given during the mid-year evaluation, assign a rating to each category, determine the overall rating for the year end, and discuss the employee's performance with him. The overall rating given at the twelve (12) month evaluation shall be the employer's FINAL rating of performance.

(4) When an employee receives two (2) successive final ratings of "fails to meet requirements," he shall be demoted to a position commensurate with his skills and abilities or dismissed.

(5) The evaluator of each employee shall be the first line supervisor (or the person with direct supervisory responsibility over the employee) provided that he has supervised the employee in the same position for a minimum of ninety (90) calendar days. If a supervisor has supervised the employee for at least ninety (90) calendar days and if he ceases to be the employee's supervisor after such period of time, he/she shall evaluate the employee at least five (5) working days prior to the day he ceases to be the employee's supervisor. If a supervisor ceases to be the supervisor of an employee due to the suspension, demotion or dismissal of the supervisor, the next line supervisor shall evaluate the employee of the supervisor who has left. If an employee transfers to a new job, he/she shall be evaluated by his/her prior supervisor if that supervisor supervised the employee no less than ninety (90) calendar days prior to notification of his/her transfer.

(6) All employees shall be evaluated during the same time period. All ratings shall be completed and the results submitted to the Department of Personnel as prescribed by the commissioner. Evaluators shall schedule evaluation conferences to allow twenty-five (25) working days for reconsideration, as needed.

Section 4. Request for Reconsideration. (1) Any employee may request reconsideration of his evaluation. Such a request shall only apply to the employee's FINAL RATING OF PERFORMANCE. In response to an employee's request, a reconsideration meeting of the employee and the evaluator shall be held. The meeting shall be scheduled no sooner than two (2) working days and no later than five (5) working days after the evaluation was first presented to the employee.

(2) If the employee does not agree with the rating following the reconsideration meeting, he may request further review of the evaluation by submitting a written request to the reviewer (second line supervisor) within five (5) working days following the reconsideration meeting.

(3) The reviewer (second line supervisor) shall either obtain a written statement from the evaluator and employee, or meet individually with the evaluator and with the employee to discuss the rating. The reviewer shall inform the employee and the evaluator in writing of his determination within fifteen (15) working days from receipt of the request for review.

(4) In accordance with 101 KAR 1:350, Section 10, an employee may appeal an evaluation to the Personnel Board within thirty (30) days after he has received the written decision of the second line supervisor, excluding the day the written decision was received.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Increase in paperwork.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:120. Incentive programs.

RELATES TO: KRS 18A.110, 18A.202
PURSUANT TO: KRS Chapter 13A, 18A.202
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, to implement work related incentive programs for state employees. This regulation is necessary to comply with these statutory provisions.

Section 1. Employee Suggestion System. (1) Employees in the classified service may be recognized and rewarded for submitting suggestions that result in the improvement of state service or in the realization of financial savings by the state.

(2) An employee suggestion system council, which shall consist of designated cabinet or agency suggestion system coordinators and which shall be chaired by a designee of the commissioner, shall develop procedures to ensure proper evaluation of each suggestion, review and act upon, by approval or rejection, any suggestion presented to the council by a cabinet or agency, and review denials as set forth in Section 5 of this regulation. Only designated coordinators shall have the right to present recommended suggestions to the council and to vote on them. The employee suggestion system council may defer action on a suggestion in order to obtain additional information or may defer action up to one (1) year and one (1) month pending documentation of cash savings. The employee suggestion system council shall prepare an annual report to be submitted to the commissioner that shall include the number of suggestions received and the status of each suggestion. The council shall meet at a minimum on a quarterly basis or upon the request of the council chairman.

(3) Each cabinet secretary or agency head shall designate, in writing, the appointment of an employee suggestion system coordinator who shall also serve on the employee suggestion system council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions made by employees of his cabinet or agency and such suggestions that may be forwarded from other cabinet coordinators that affect his agency. The coordinator shall present suggestions recommended for approval by his cabinet or agency to the council for consideration.

Section 2. Eligibility. (1) A suggestion is a positive idea which explains how to improve methods, equipment or procedures; reduces time and/or cost of a work operation; creates a safer work environment; increases revenue; or improves relationships with or services to the public.

(2) The suggestion must present an improvement in state service or function and must explain how the change would be accomplished and what benefits would result to the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations. The suggestion shall be submitted on the form designated by the council and be accompanied by exhibits or illustrations as needed.

(a) Suggestions must be practicable, useful and constructive.

(b) A suggestion that requires legislative or regulatory changes for implementation may be submitted. However, it is the responsibility of the agency that desires to implement the suggestion to request the necessary legislative or regulatory changes. Upon appropriate legislative action or regulation changes, the suggestion may be considered for an award.

(3) The following suggestions are not eligible for a cash award:

(a) A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. Scope of duties shall be defined as a specific set of tasks as set forth in the position description of the suggester at the time the suggestion is submitted. Authority is defined as the power to implement the suggestion.

(b) Suggestions related to a particular problem given to an employee to solve within the scope of his duties and responsibilities.

(c) Suggestions falling within the scope of a special committee or task force to which an employee is assigned.

(d) Suggestions made by members of the council or a cabinet/agency suggestion review committee.

(e) Suggestions which include proposals to perform routine maintenance operations.

(f) Suggestions to make a change which has been documented as already under consideration by those administratively responsible.

(g) Suggestions which correct a condition that exists only because established procedures are not followed.

(4) If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly with any award being divided equally between or among the suggesters.

(5) The first suggestion received takes precedence over all future suggestions having the same purpose. If two (2) or more suggestions deemed similar are received on the same day, any award granted will be divided equally between or among the suggesters.

(6) Suggestions shall be considered confidential communications among the suggesters and the employee and officers whose responsibility it is to process, investigate, review or evaluate suggestions.

Section 3. General Provisions. (1) The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

(a) A method to notify the suggester, in writing, that the suggestion has been received, and to periodically notify the suggester, in writing, of the status of the suggestion.

(b) A method to document the original suggestion, evaluation and action taken.

(c) A method to prepare and present documentation of suggestions for recommendation to the employee suggestion system council.

(2) Eligibility of a suggestion shall be evaluated according to the circumstances existing at the time the suggestion was made. An evaluation shall be completed by a person with expertise in the area under consideration. The results of the evaluation shall be recorded on

the form designated by the council, and the form shall be dated and signed by the individual making the evaluation.

(3) Suggesters shall be notified in writing of the disposition of their suggestion within ninety-five (95) calendar days of receipt by the coordinator. If all parties involved agree, an extension of time may be granted when extenuating circumstances exist.

(a) A suggestion shall be considered to be active and eligible for an award until the suggester is notified, in writing, that the suggestion has been approved or denied.

(b) When it is determined that a suggestion will not be implemented, the coordinator shall notify the suggester, in writing, stating the reason it was not implemented.

(c) When an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request re-evaluation by the cabinet or agency. Such request shall be in writing and shall be received by the agency within one (1) year from the date of rejection. The request shall be accompanied by information of the change of circumstances.

(4) When a suggestion is determined to be of benefit as set forth in Section 2(1) of this regulation, the cabinet coordinator shall recommend approval of the suggestion to the council.

(a) The recommendation shall contain:

1. The suggestion as completed by the suggester on the form designated by the council;
2. The evaluation forms completed according to the criteria as set forth in this regulation; and
3. A statement of actual or projected cost savings using generally accepted accounting principles.

(b) The chairman of the council shall send written notification to the cabinet coordinator of the council's action.

(c) Upon receipt of the council's decision, the coordinator shall notify the employee, in writing, of the decision.

(d) When an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.

(5) Award of cash payment shall be in accordance with KRS 18A.202.

(a) The calculation of cash payment represents the amount saved over the period of one (1) year, less implementation costs, to be determined according to generally accepted accounting principles.

(b) The award check shall be issued by the agency where the suggester is employed. Funds for payment shall come from the agency or agencies implementing the suggestion. The agency issuing the check may inter-account other agencies implementing the suggestion for a proportionate share of the total amount of the award.

(c) When a suggestion is made promoting financial savings to the state for which proper documentation of cost savings has not yet been obtained, the council may request that each agency implementing the suggestion maintain records documenting the cost savings for a period not to exceed one (1) year from the date of implementation. Documentation shall be carried out according to generally accepted accounting principles and shall be forwarded within thirty (30) work days of completion by the coordinator to the chairman of the council.

(6) When an employee suggestion has been approved by the council and has resulted in a financial savings to the state, the employee who submitted the suggestion shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of $100, and with a maximum of $2,500. When an employee suggestion has been approved by the council and has resulted in an intangible improvement in state service, the employee shall be compensated in the amount of $100. Upon employee's receipt of compensation, the suggestion becomes the property of the state.

Section 4. Reconsideration. (1) A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of disapproval is received by the employee.

(2) The suggester shall request reconsideration, in writing, and shall set forth the basis for the request. The request shall be filed with the coordinator within the aforementioned ten (10) day period. When the tenth day falls on a day that the cabinet or agency office is closed during normal work hours, the request may be filed on the next work day.

(3) The cabinet or agency shall act on the request for reconsideration within thirty (30) work days and respond to the employee, in writing, setting forth the reason for the decision.

Section 5. Council Review. (1) When a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council. The suggester may request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth, in writing, the basis for his request. The request shall be filed in the office of the employee suggestion system chairman within the aforementioned thirty (30) day period. When the thirtieth day falls on a day that the chairman's office is closed during normal work hours, the request may be filed on the next work day.

(2) The council shall complete the review within ninety (90) days of the date that the request for review is received by the chairman.

(3) The chairman of the council shall notify the agency head of the findings of the council's review and its recommendation concerning the suggestion to be implemented or denied.

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: July 14, 1986

FILED WITH LRC: July 14, 1986 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Increase in paperwork.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 2:130. Political activity.

RELATES TO: KRS 18A.140
PURSUANT TO: KRS Chapter 13A, 18A.030, 18A.040, 18A.075, 18A.110
NECESSITY AND FUNCTION: KRS 18A.140 prohibits certain political activities by classified employees. KRS 18A.030 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A and federal standards for the administration of a personnel system. KRS 18A.040 requires compliance with federal merit system standards. KRS 18A.110 provides that administrative regulations promulgated by the commissioner may include such administrative regulations not inconsistent with KRS Chapter 18A as may be proper and necessary for its enforcement. This regulation is to implement the statutory provision and to provide uniform guidance to all classified employees concerning political activity.

Section 1. Permitted Activities. Permitted political activities include the following:
(1) Registration and voting. Classified employees may register and vote in any election.
(2) Expression of opinions. Classified employees may privately express their opinions on all political subjects and candidates, but they may not take an active part in political management and in political campaigns.
(3) Contributions. Classified employees may make voluntary cash contributions to political parties, candidates or organizations; provided, however, it shall be unlawful for classified employees to make contributions of goods, labor and services.
(4) Membership in political clubs. Classified employees may join a political club and attend its meetings but may not hold office or serve on committees of the club.
(5) Attendance at political rallies, conventions, etc. Classified employees may attend political rallies and conventions, may participate in the selection of committeemen and committeewomen, and may vote at the lowest level of the selection process for delegates to the party conventions.
(6) Political pictures and signs. Classified employees may voluntarily display political pictures or signs on their property.
(7) Badges, buttons, and stickers. Classified employees may wear political badges or buttons and voluntarily display political stickers on their private automobiles; provided, however, that no political buttons, badges or other such designations may be worn by any classified employee of the Commonwealth while the employee is on official duty or while such employee is conducting official business for the Commonwealth.
(8) Precinct election officers - polls. Classified employees may serve as non-partisan precinct election officers at the polls.
(9) Constitutional amendments, referendums, etc. Classified employees may work actively for or against constitutional amendments, referendums, municipal ordinances and other questions of non-partisan nature.
(10) Transporting voters. Classified employees while on their own time may drive friends or relatives to the polls as a civic gesture, but may not transport voters to the polls as an organized service to a political party, faction, or candidate.

Section 2. Prohibited Political Activities. Prohibited political activities, whether the employee is on or off duty, include but are not limited to the following:
(1) Political party involvement. A classified employee is prohibited from serving on or for any political committee, party, or other similar organization, or serving as a delegate or alternate to a caucus or party convention, but may vote in the selection of delegates to a party convention and in the selection of precinct committeemen and committeewomen.
(2) Political contributions. A classified employee is prohibited from soliciting or handling political contributions.
(3) Political party tickets. A classified employee is prohibited from soliciting the sale of or selling political party, faction, or candidate items or tickets, but a classified employee may voluntarily purchase such items or tickets.
(4) Political club involvement. A classified employee is prohibited from serving as an officer of a political club, as a member or officer of any of its committees, of addressing such a club on any partisan political matters,

or of being active in organizing it.
(5) Political meetings and rallies. A classified employee is prohibited from serving in connection with preparation for, organizing or conducting a political meeting or rally or addressing such a meeting on any partisan political matter or taking any other active part therein except to vote.
(6) Partisan activity at election polls. A classified employee is prohibited from engaging in partisan activity at the polls (at primary or regular elections) in the position of checker, challenger, or watcher, or in soliciting votes and assisting voters to mark ballots.
(7) Candidacy for office. A classified employee is prohibited from becoming a candidate for nomination or election to any office, federal, state, county, or municipal, which is to be filled in an election in which party candidates are involved or for which compensation is paid (other than a per diem); or from soliciting others to become candidates for nomination or election to such offices.
(8) Campaign literature distribution. A classified employee is prohibited from distributing campaign literature or material.
(9) Nominating petitions. A classified employee is prohibited from initiating or circulating partisan political nominating petitions.
(10) Solicitation of political support. A classified employee is prohibited from canvasing a district or soliciting political support for a party, faction, or candidate, either in person or in writing.

Section 3. Posting of Regulation. Each appointing authority shall post, in a form prescribed by the commissioner, a copy or copies of KRS 18A.140 and this regulation in a central area accessible to all classified employees of that cabinet, department or agency.

Section 4. Copy of Regulation to Employees. Each appointing authority shall furnish a copy of KRS 18A.140 and this regulation in a form prescribed by the commissioner to each employee and require them to sign an acknowledgment of receipt which shall then be placed in the employee's personnel folder.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: Minimal cost.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Additional paperwork.
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the classified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 3:005. Repeal of previous regulations.

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.155 specifies the subjects which these administrative regulations are to address. This regulation is to comply with these statutory provisions by repealing regulations adopted prior to the current statutory authorization.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 1:200, Rules for unclassified service; 101 KAR 1:205, Employee evaluation plan, unclassified; 101 KAR 1:210, Appeal for employees in the unclassified service; 101 KAR 1:220, Unclassified service, classification and compensation plans; and 101 KAR 1:230, Unclassified service, promotions, transfers and disciplinary actions.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All unclassified state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the unclassified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 3:010. Leave regulations for unclassified service.

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.155(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. In practice, the leave regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, or each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

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

A full-time employee must have worked more than half of the work days in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.
(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

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

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.
(3) Absence due to sickness, injury, or disability in excess of that authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.
(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year,

up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

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

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for accumulated annual leave at the higher rate. The effective date of the separation shall be the last work day. A pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 1(2) of this regulation.

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

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may

require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

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

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or re-employed shall have unused sick leave balances revived upon appointment and placed to their credit.

(11) In cases of absence due to illness or injury for which Workers' Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 4. Compensatory Leave and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act. An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis, subject to the provisions of the Fair Labor Standards Act and Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

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

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency. To maintain a managable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "non-exempt" shall be paid at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7)(a) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(b) An employee in a policy making position shall be paid for all accured compensatory leave, not to exceed 200 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency unless he is appointed at a lower salary; in this case the employee has the option to be paid for his compensatory leave at the higher rate.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total

hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 6. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, ample time, up to a maximum of four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 7. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service, or for other purposes that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.

Section 8. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All unclassified employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(2) Effects on the promulgating administrative body: No costs or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the unclassified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 3:030. Appeals for employees in the unclassified service.

RELATES TO: KRS 18A.095, 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.095, 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. KRS 18A.095 grants the right of appeal to the Personnel Board to those unclassified employees who are dismissed, demoted, suspended, or otherwise penalized for cause. This regulation complies with and implements these statutory provisions.

Section 1. Unclassified Employees Right to Appeal. Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after such dismissal, demotion, suspension, or other form of penalization, appeal to the Personnel Board for review thereof.

Section 2. Appeal Procedures for Unclassified Employees. Appeals to the Personnel Board pursuant to KRS 18A.095 and Section 1 of this regulation shall be in accordance with KRS 18A.095 and 101 KAR 1:350, Section 15.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All unclassified state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: No costs or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Minimal increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the unclassified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

101 KAR 3:040. Unclassified service; classification and compensation plans.

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155
NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision.

Section 1. Classification Plan. (1) The commissioner shall, after consultation with the appointing authorities, prepare and recommend to the Governor a classification plan for adoption. The plan shall be based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Each position shall be allocated to its proper class in the classification plan after consultation with appointing authorities. The classification plan shall include for each class of position an appropriate title, description of duties and responsibilities, and the required education, experience and other qualifications.
(2) The principles and provisions of 101 KAR 2:020 shall apply to positions in the unclassified service.

Section 2. Compensation Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, develop a pay plan for all aforementioned employees in the unclassified service, taking into account such factors as:
(a) The relative levels of duties and responsibilities of various classes of positions;
(b) Rates paid for comparable positions elsewhere; and
(c) The state's financial resources.
Such pay plan shall become effective only

after it has been approved by the Governor after submission to him by the commissioner through the Secretary of the Department of Finance. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed.

(2) With the exception of the provision relating to probationary increments, the principles and provisions of 101 KAR 2:030 shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.

(3) Salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a salary adjustment not to exceed ten (10) percent when standards of internal equity justify such an adjustment.

(c) Inasmuch as the appointing authority has the option of not providing salary increases under this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

(4) Physicians, employed as such and pursuant to KRS 64.655, are exempted from the provisions of 101 KAR 2:030, Section 2, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating

(1) Type and number of entities affected: All unclassified state employees and state agencies covered by KRS Chapter 18A.

(a) Direct and indirect costs or savings to those affected: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the unclassified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

DEPARTMENT OF PERSONNEL

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

RELATES TO: KRS 18A.155
PURSUANT TO: KRS Chapter 13A, 18A.155

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision.

Section 1. Promotion. (1) Vacancies may be filled by promotion whenever practicable and in the best interest of the service. Employees in executive policy-making positions serve at the pleasure of the appointing authority.

(2) A promotion is the filling of a vacancy by the advancement of an employee from a position having a lower minimum salary. Promotion to an executive policy-making position requires prior written approval of the Governor in accordance with KRS 12.050.

(3) Any career employee promoted from a classified to an unclassified position retains his status in the classified service. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080,

Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to KRS 18A.130 and 18A.135.

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

Section 2. Transfer. (1) The movement of an employee from one position to another of the same grade having the same salary ranges and the same level of responsibility shall be deemed a transfer. An employee appointed in accordance with KRS 12.050 cannot be transferred. A transfer may be an inter-agency or intra-agency action. An appointing authority, with written notice, may transfer an employee from one position to another in the unclassified service. An employee may request a transfer. The employee must meet the minimum requirements of the job class to which transferred.

(2) An employee may be transferred between agencies to a position having the same salary range and level of responsibility, with the approval of the commissioner.

Section 3. Demotion. (1) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility.

(2) An employee may be demoted by the appointing authority with the approval of the Commissioner of Personnel. If the demotion is for cause, the employee may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15 or KRS 18A.095(9).

(3) If, for personal or other reasons, an employee requests in writing that he be assigned to a position of a lower class, the appointing authority may make such a voluntary demotion. Involuntary demotions shall be intra-agency only.

Section 4. Detail to Special Duty. When the services of a permanent employee are needed in a position within the agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with approval of the Commissioner of Personnel. For detail to special duty the Commissioner of Personnel may waive the minimum requirements when requested by the appointing authority in writing.

Section 5. Temporary Overlap. With the prior approval of the commissioner, an agency may place an employee for training purposes, in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days.

Section 6. Separations and Disciplinary Actions. (1) General provisions. Except as otherwise provided in these regulations, the tenure of an employee shall be during good behavior and the satisfactory performance of his duties.

(2) Layoffs. An appointing authority may lay off an employee whenever he deems it necessary by reason of shortage of funds or work, abolishment of a position, or other material change in duties or organization. The employee shall be notified of the effective date at least fourteen (14) calendar days prior to such effective date and shall be given written notice of the reasons for the layoff. An career employee who has been promoted from the classified service to the unclassified service must be reverted to the classified service in order to be considered for layoff. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080, Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to re-employment procedures and KRS 18A.130 and 18A.135.

(3) Dismissals. The appointing authority, upon written notice, may remove an employee for cause, or without cause. If the dismissal is for cause, the employee may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15, and the appointing authority must notify the employee in writing of the reasons for the dismissal and of the employee's right to appeal. An career employee who has been promoted from the classified service to the unclassified service and who is dismissed from the unclassified service without cause shall revert to the classified service. On separation from the unclassified service, he reverts to a position in that class in which he had status in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists in a position of the former class, the regulation (101 KAR 2:080, Section 2) pertaining to layoff shall apply. He shall be considered for employment in any vacant position for which he is qualified pursuant to re-employment procedures and KRS 18A.130 and 18A.135.

(4) Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

(5) Retirement. If an employee is retired, he is considered as separated without prejudice.

(6) Suspension. An appointing authority, upon written notice stating the reasons therefor, a copy of which shall be sent to the commissioner, may suspend an employee without pay or other compensation as punishment for disciplinary cause. Such a suspension shall not exceed thirty (30) working days during any twelve (12) month period. The twelve (12) month period begins with the first day of the suspension. An employee suspended for cause may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15, and the appointing authority must notify the employee in writing of the employee's right to appeal.

(7) Disciplinary fines. An appointing authority may impose, as a disciplinary measure, a fine to be computed on the basis of the employee's current salary. Disciplinary fines may not exceed ten (10) days' pay for each occurrence, and may not exceed a total of thirty (30) days' pay in any twelve (12) month period. The employee shall be notified in writing by the appointing authority of the reasons for the

action, a copy of which shall be sent to the commissioner. An employee receiving a disciplinary fine for cause may appeal to the Personnel Board pursuant to 101 KAR 1:350, Section 15, and the appointing authority must notify the employee in writing of the employee's right to appeal.

(8) Written reprimands. An appointing authority may give an employee a written reprimand as a preliminary disciplinary measure. A copy of the written reprimand shall be placed in the employee's personnel file in the agency and a copy shall be given to the employee, Department of Personnel and Personnel Board. The employee shall be given the opportunity to reply in writing to the written reprimand and to include this reply in his personnel file with the written reprimand. The employee shall be informed of his right to reply at the time the written reprimand is given.

MARTHA LAYNE COLLINS, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on Monday, August 25, 1986 at 10 a.m., Room 360 of the Capitol Annex in Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 20, 1986 of their desire to appear and testify at the hearing: Thomas C. Greenwell, Commissioner, Department of Personnel, Room 373, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold Newton or Anne Keating
(1) Type and number of entities affected: All unclassified state employees and state agencies covered by KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: No cost or savings.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. All state employees in the unclassified service under KRS Chapter 18A are covered by the new regulations. The changes have a minimal effect on policies and procedures.

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

401 KAR 59:082. New kraft pulp plants.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regualtions for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new kraft pulp mills.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "regional administrator" shall be read as "secretary," "EPA" and "agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new kraft pulp mills contained in 40 CFR 60, Subpart BB, as published in the Code of Federal Regultions, Title 40, Parts 53 to 80, July 1, 1985, and as amended by Federal Register 51 FR 18544, May 20, 1986, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart BB are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart BB, as amended, limits emissions of particulate matter and total reduced sulfur (TRS) from all new kraft pulp mills that commenced construction, modification, or reconstruction after September 24, 1976. The affected facilities in kraft pulp mills are: digester system, brown stock washer system, multiple-effect evaporator system, recovery furnace, smelt dissolving tank, lime kiln, and condensate stripper system. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:
(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;
(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;
(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;
(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;
(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;
(f) Owensboro Regional Office, 311 West Second

Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

Section 5. 401 KAR 59:081, New kraft pulp mills, is hereby repealed.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by refernce the revised federal regulation on New Source Performance Standards (NSPS) for new kraft pulp mills, 40 CFR 60, Subpart BB, and repeals the outdated corresponding state regulation, 401 KAR 59:081. The federal regulation applies to all new kraft pulp mills that commenced construction, modification, or reconstruction after September 24, 1976. The Division currently has a regulation similar to the federal NSPS regulation for these sources, however, the federal regulation was recently amended to allow an alternative test method to be used to determine compliance with the standard for total reduced sulfur, to exempt certain processes from other standards, to delete or change specific monitoring requirements, to relax and revise some emission limits, and to correct other portions of the federal regulation. The Cabinet is therefore adopting by reference the federal regulation, as amended, and is repealing the regulation which is currently in effect, so that Kentucy's regulation will be identical to the federal regulation. There are no sources in Kentucky which are presently affected by the recent federal amendments, however, any source may elect to use the alternative test method which is easier and more economical to use. Any new source would be subject to the requiremens in the federal regulation, irrespective of its location. Available information indicates that the addition of the test method and the relaxations in the federal regulation would not impose any additional requirements on any sources in Kentucky.
(a) Direct and indirect costs or savings to those affected: The proposed regulation would allow sources to use an easier and more economical test method, Method 16A, to determine total reduced sulfur (TRS) emissions from kraft pulp mills. Therefore, there would be some economic advantage to a source, if it elected to use Method 16A over Method 16 to determine total reduced sulfur (TRS) emissions.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None due to the proposed regulation. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.284.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The Division will continue to review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The Division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the Division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The Division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation, thereby allowing sources to work with the state to obtain the necessary permits rather than the federal government.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on the prevention of significant deterioration (PSD) and new source review in non-attainment areas, 401 KAR 51:017 and 401 KAR 51:052, respectively, may be overlapping if a new or modified source has emissions of greater than 100 tons per year. The standards in this NSPS regulation establish the minimum amount of controls necessary, however, 401 KAR 51:017 or 401 KAR 51:052 may require additional controls over those which are required by this NSPS regulation. In any case, the regulation with the more stringent emission limitation would apply to the source for purposes of PSD and new source review in non-attainment areas.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: In the Federal Register of February 23, 1978 (43 FR 7572), the U.S. EPA promulgated a new source performance standard (NSPS) limiting emissions of particulate matter and total reduced sulfur (TRS) from all new kraft pulp mills. The U.S. EPA granted Kentucky the delegation of authority to enforce the provisions of the federal regulation based on the state's regulation, 401

KAR 59:081. In the Federal Register of March 8, 1985 (50 FR 9579), and May 6, 1985 (50 FR 19022), EPA amended the regulation to allow an alternative test method, Method 16A, to be used for determining total reduced sulfur (TRS) emissions. The federal regulation was again amended on May 20, 1986 (51 FR 18544), to relax th emission standards for total reduced sulfur (TRS) and to exempt monitoring and reporting requirements for specified affected facilities. Since the revisions to the federal regulation represent a relaxation of the existing standards, there would not be any economic disadvantages to Kentucky in promulgationg this regulation.

The Cabinet is promulgating this regulation to adopt by reference the federal regulation, as amended, so that the state's regulation will be identical to the federal NSPS regulation. The Cabinet is also amending 401 KAR 50:015 to incorporate by reference the new Reference Method 16A which is allowed in this regulation.

In addition, this regulation repeals the present regulation (401 KAR 59:081) so that there would not be a duplication or conflict of requirements for these sources.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

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

401 KAR 59:211. New flexible vinyl and urethane coating and printing operations.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new rotogravure printing lines used to print or coat flexible vinyl or urethane products.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "regional administrator" shall be read as "secretary," "EPA" and "agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new flexible vinyl and urethane coating and printing operations contained in 40 CFR 60, Subpart FFF, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1985, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart FFF are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart FFF, limits emissions of volatile organic compounds from all new rotogravure printing lines used to print or coat flexible vinyl or urethane products, that commenced construction, modification, or reconstruction after January 18, 1983. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (501) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for new flexible vinyl and urethane coating and printing operations, 40 CFR 60, Subpart FFF. The federal regulation applies to all new rotogravure printing and coating lines that commenced construction, modification, or reconstruction after January 18, 1983. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. Any new sources would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.

(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. However, cost estimates provided with the federal regulation indicate that there would be increased capital costs in

the industry to meet the federal standard. Annualized costs for the entire industry to meet the control level of the promulgated standards would be approximately $289,000 by 1987, including a projected growth rate of 8% per year for the industry. Promulgation of this regulation would have no significant impact on the consumer price of the products. The expected maximum price increase, based on the use of carbon absorption to meet the federal standard would be 0.05 percent; whereas the use of incineration to meet the federal standard would increase the price by 0.67 percent. No major economic impacts are expected on any geographical regions or local governments. Future sources in Kentucky will have the same controls as required anywhere else in the country.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: Sources will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.584 and 40 CFR 60.585.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation, thereby allowing sources to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on the prevention of significant deterioration (PSD) and new source review in non-attainment areas, 401 KAR 51:017 and 401 KAR 51:052, respectively, may be overlapping if a source subject to a new source review in non-attainment areas has emissions greater than 100 tons per year or if a source subject to PSD has emissions greater than 250 tons per year. The standards in this NSPS regulation establish the minimum amount of controls necessary, however, 401 KAR 51:017 or 401 KAR 51:052 may require additional controls over those which are required by the NSPS regulation. In any case the regulation with the more stringent emission limitation would apply to the source for purposes of PSD and new source review in non-attainment areas.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: In the Federal Register of June 29, 1984 (49 FR 26892) and August 17, 1984 (49 FR 32848), the U.S. EPA promulgated a new source performance standards (NSPS) limiting emissions of volatile organic compounds (VOCs) from new rotogravure lines which are used to coat or print flexible vinyl or urethane products. The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

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

401 KAR 59:242. New petroleum dry cleaning plants.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new petroleum dry cleaning plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "regional administrator" shall be read as "secretary," "EPA" and "agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new petroleum dry cleaning plants contained in 40 CFR 60, Subpart JJJ, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1985, and as amended by Federal Register 50 FR 49026, November 27, 1985, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart JJJ are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart JJJ, limits emissions of volatile organic compounds from the following affected facilities in a petroleum dry cleaning plant: petroleum solvent washers, dryers, filters, vacuum stills,

and settling tanks. Any affected facility at a petroleum dry cleaning plant that commenced construction, modification, or reconstruction after December 14, 1982, shall be subject to the provisions of this regulation. The provisions of this regulation shall not apply at petroleum dry cleaning plants with a total manufacturers' rated dryer capacity of less than thirty-eight (30) kilograms (eighty-four (84) pounds). Any dryer installed between December 14, 1982, and September 21, 1984, in a dry cleaning plant with an annual solvent consumption of less than 4,700 gallons, is exempt from the requirements of this regulation. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director

(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Peformance Standards (NSPS) for petroleum dry cleaning plants, 40 CFR 60, Subpart JJJ. The federal regulation applies to all affected facilities that commenced construction, modification, or reconstruction after December 14, 1982, at petroleum dry cleaning plants with a total manufacturers' rated dryer capacity equal to or greater than 38 kilograms (84 pounds). However, dryers installed between December 14, 1982, and September 21, 1984, at any petroleum dry cleaning plant with an annual solvent consumption of less than 4,700 gallons, are exempt from the provisions of this regulation. Available information indicates that there are presently no sources in Kentucky to which this regulation applies. However, there are two existing sources in Jefferson County, Spalding's Cleaners and Laundry (078-1920-0212), and Community Towel and Uniform (078-1920-0795), which if they were to undergo modification or reconstruction would be subject to the requirements in the federal regulation. Any new source would be subject to the requirements in the federal regulation, irrespective of its location.

(a) Direct and indirect costs or savings to those affected: Cost estimates provided by the U.S. Environmental Protection Agency (EPA), though not specific to Kentucky sources, indicate increased capital costs associated with the promulgated standards for the entire industry. However, the solvent recoverd by solvent recovery dryers would provide a net profit (negative annualized cost) and the annualized costs for the industry will decrease by $3.6 million in the fifth year following promulgation of the new standards. Therefore, no adverse economic impacts are expected to result from the promulgated standards and it is expected that there would be no increase in the price of dry cleaning services due to the promulgation of this regulation. Furthermore, future sources in Kentucky will have the same controls as required anywhere else in the country; therefore, there are no economic disadvantages to Kentucky caused by promulgating this regulation.

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.625.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.

1. First year: The division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.

2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative

methods were considered since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation, thereby allowing sources to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on the prevention of significant deterioration (PSD) and new source review in non-attainment areas, 401 KAR 51:017 and 401 KAR 51:052, respectively, may be overlapping if a source subject to a new source review in non-attainment areas has emissions greater than 100 tons per year or if a source subject to PSD has emissions greater than 250 tons per year. The standards in this NSPS regulation establish the minimum amount of controls necessary, however, 401 KAR 51:017 or 401 KAR 51:052 may require additional controls over those which are required by the NSPS regulation. In any case, the regulation with the more stringent emission limitation would apply to the source for purposes of PSD and new source review in non-attainment areas.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: In the Federal Register of September 21, 1984 (49 FR 37331), the U.S. EPA promulgated a new source performance standards (NSPS) limiting emissions of volatile organic compounds (VOCs) from new petroleum dry cleaning plants. The federal regulation was subsequently amended on November 27, 1985 (50 FR 49026), to clarify the applicability of the regulation. The federal regulation specifies the type of equipment and faciliteis in a petroleum dry cleaning plant which would be affected by this regulation. The affected facilities are: petroleum solvent washers, dryers, filters, settling tanks, and vacuum stills. There are two sources in Kentucky which would be subject to the provisions of this regulation, if they were to undergo modification or reconstruction. The affected sources would be Spalding's Cleaners and Laundry (078-1920-0212) and Community Towel and Uniform (078-1920-0795), located in Jefferson County. The Air Pollution Control District of Jefferson County (APCDJC) has concurrent jurisdiction and has approved regulations for controlling air pollution in Jefferson County. It is also responsible for issuing construction and operating permits to all sources in Jefferson County. Those two sources would be subject to the regulations issued by the APCDJC unless the APCDJC did not have a comparable regulation. In such a case, the sources would be subject to the state's regulation. The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources regardless of their location, and so that the state's regulation will be identical to the federal NSPS regulation. Dry cleaning plants using perchloroethylene are not subject to the provisions of this regulation.

Tiering:
Was tiering applied? Yes. This regulation exempts all petroleum dry cleaning plants with a manufacturers' rated dryer capacity of less than 38 kilograms (84 pounds) and dryers installed between December 14, 1982, and September 21, 1984.

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

401 KAR 59:290. New wool fiberglass insulation manufacturing plants.

RELATES TO: KRS 224.320, 224.330, 224.340
PURSUANT TO: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new wool fiberglass insulation manufacturing plants.

Section 1. General References. In the federal regulation adopted by reference in this regulation, "regional administrator" shall be read as "secretary," "EPA" and "agency" shall be read as "cabinet," and "this subpart" shall be read as "this regulation."

Section 2. The federal regulation for new wool fiberglass insulation manufacturing plants contained in 40 CFR 60, Subpart PPP, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1985, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 60, Subpart PPP are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 60, Subpart PPP, limits emission of particulate matter from all affected facilities that commenced construction, modification or reconstruction after February 7, 1984. The affected facility is each rotary spin wool fiberglass insulation manufacturing line in a wool fiberglass insulation manufacturing plant. The manufacturing line is the manufacturing equipment comprising the forming section, where molten glass is fiberized and a fiberglass mat is formed; the curing section, where the binder resin in the mat is thermally set; and the cooling section, where the mat is cooled. The standards in the federal regulation represent the best demonstrated technology for the industry.

Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

(a) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;
(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;
(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;
(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;
(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and
(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CHARLOTTE E. BALDWIN, Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 9 a.m.
PUBLIC HEARING SCHEDULED: A public hearing to receive comments on this proposed amendment will be conducted on August 28, 1986, at 10 a.m. (EDT) in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, Mr. William S. Coakley, Manager, Program Development Branch, Division of Air Pollution Control, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roger B. McCann, Director
(1) Type and number of entities affected: This regulation adopts by reference the federal regulation on New Source Performance Standards (NSPS) for wool fiberglass insulation manufacturing plants, 40 CFR 60, Subpart PPP. The federal regulation applies to all new manufacturing lines which commenced construction, modification, or reconstruction after February 7, 1984, in a wool fiberglass insulation manufacturing plant. There are presently no sources in Kentucky to which this regulation applies. Any new source would be subject to the requirements in the federal regulation, irrespective of its location. However, promulgation by Kentucky of this regulation would allow the state rather than the U.S. EPA to issue permits to these sources should any be constructed.
(a) Direct and indirect costs or savings to those affected: Since there are no sources presently affected by this regulation, no costs or savings are incurred. However, cost estimates provided by the U.S. EPA for the federal regulation indicate that the total capital and annualized costs for additional control equipment necessary to meet the federal standard would represent nine percent and three percent, respectively, of the initial capital and annualized costs of the manufacturing plant. These estimates are based on facilities using only add-on control devices. However, the costs for new sources to meet the federal standards would probably be less than the cost estimates provided by the U.S. EPA for sources which use only add-on control devices to meet the federal standards. Ultimately, the price of wool fiberglass insulation could increase by 0.63 percent nationally as a result of implementation of the federal standard. Future sources will have the same controls required in Kentucky as anywhere else in the country.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: None on present sources. New plants will be required to apply for construction and operating permits. The reporting and recordkeeping requirements appear in 40 CFR 60.684.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None presently; the following applies for sources which construct in the future.
1. First year: The division will review and process construction and operating permits. Costs will be recovered by a permit fee pursuant to 401 KAR 50:036.
2. Continuing costs or savings: The division presently inspects all permitted sources of air pollutants and maintains plant and emission data for emissions inventory purposes. Such activities are part of the division's normal day-to-day operations and are budgeted accordingly. Any new source will be inspected and the costs will be absorbed as a part of the operating budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The division will review and issue construction and operating permits for new sources and will issue reports of inspections and emission data as in 1 and 2 above.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since this regulation contains the same provisions as the federal regulation. Kentucky is promulgating this regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal regulation, thereby allowing sources to work with the state to obtain the necessary permits rather than the federal government.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulations on the prevention of significant deterioration (PSD) and new source review in non-attainment areas, 401 KAR 51:017 and 401 KAR 51:052, respectively, may be overlapping if a source subject to a new source review in non-attainment areas has emissions greater than 100 tons per year or if a source subject to PSD has emissions greater than 250 tons per year. The standards in this NSPS regulation establish the minimum amount of controls necessary, however, 401 KAR 51:017 or 401 KAR 51:052 may require additional controls over those which are required by the NSPS regulation. In any case, the regulation with the more stringent emission limitation would apply to the source for purposes of PSD and new source review in non-attainment areas.
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: In the Federal Register of February 25, 1985 (50 FR 7699), the U.S. EPA promulgated a new source

performance standard (NSPS) limiting emissions of particulate matter from new wool fiberglass insulation manufacturing plants. The federal regulation specifies the types of equipment and facilities in wool fiberglass insulation manufacturing plants which would be affected by this regulation. The affected facility is each manufacturing line which consists of the manufacturing equipment comprising the forming section, where molten glass is fiberized and a fiberglass mat is formed; the curing section, where the binder resin in the mat is thermally set; and the cooling section, where the mat is cooled. The cabinet is promulgating this regulation to adopt by reference the federal regulation so that the cabinet may be granted authority to implement the provisions of the NSPS and issue permits to new sources. The cabinet is also amending 401 KAR 50:015 to adopt by reference the new test methods which are required in this federal regulation.

Tiering:
Was tiering applied? No. Tiering was not applied since this regulation is to be identical to the federal regulation where no tiering is allowed.

JUSTICE CABINET

500 KAR 2:010. Definitions.

RELATES TO: KRS 61.900 through 61.930
PURSUANT TO: KRS 61.904
NECESSITY AND FUNCTION: This regulation, promulgated pursuant to KRS 61.904, provides the definitions of certain terms used in 500 KAR Chapter 2 which pertains to criteria and procedures applicable for the administration of "The Special Law Enforcement Officer Act" by the Secretary of the Justice Cabinet or the secretary's designee.

Section 1. Definitions. The following definitions shall apply in this chapter. (1) "Secretary" shall mean the Secretary of the Justice Cabinet.

(2) "Cabinet" shall mean the Justice Cabinet.

(3) "Commission" shall mean a commission issued to an individual by the Secretary of Justice, entitling such individual to perform special law enforcement duties on public property.

(4) "Council" shall mean the Kentucky Law Enforcement Council.

(5) "Public property" shall mean property currently owned or used by any organizational unit or agency of state, county, city, metropolitan government, or a combination of these. The term shall include property currently owned or used by public airport authorities.

(6) "Special law enforcement officer," as set forth in KRS 61.900(6):

(a) Shall mean one whose duties include the protection of specific public property from intrusion, entry, larceny, vandalism, abuse, intermeddling, or trespass; and

(b) Shall mean one whose duties include the prevention, observation or detection of, or apprehension for, any unlawful activity on specific public property; and

(c) Shall mean one whose special duties include the control of the operation, speed and parking of motor vehicles, bicycles and other vehicles, and the movement of pedestrian traffic on specific public property; and

(d) Shall mean one whose duties include the answering of any intrusion alarm on specific public property; and

(e) Shall include the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property; and

(f) Shall not include members of a lawfully organized police unit or police force of state, county, city, or metropolitan government, or a combination of these, who are responsible for the detection of crime and the enforcement of the general criminal law enforcement of the state; it shall not include any of the following officials or officers:

1. Sheriffs, sworn deputy sheriffs, city marshals, constables, sworn deputy constables, and coroners;

2. Auxiliary and reserve police appointed under KRS 95.160, 95.445, or 95.740;

3. State park rangers and conservation officers;

4. Officers of the Department of Motor Vehicles and Division of Water Patrol responsible for law enforcement;

5. Officers of Corrections Cabinet responsible for law enforcement;

6. Fire marshals and deputy fire marshals;

7. Other officers not mentioned above who are employed directly by state government and are responsible for law enforcement;

8. Federal peace officers;

9. Those campus security officers who are commissioned under KRS 164.950;

10. Private security guards, private security patrolmen, and investigators licensed pursuant to state statute; or

11. Railroad policemen covered by KRS 277.270 and 277.280.

(8) "The Act" means the Special Law Enforcement Officer Act found in KRS 61.900 to 61.926 and referenced herein as SLEO.

(9) "SLEO program administrator" means the administrator appointed by the Secretary of the Justice Cabinet to administer the Special Law Enforcement Officer Program whose address is: SLEO Program Administrator, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky 40601.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: June 18, 1986
FILED WITH LRC: June 19, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled on August 21, 1986, at 1 p.m., in the Library Conference Room, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing at least five (5) days before the hearing, the following individual: Lucy B. Richardson, Attorney, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lucy B. Richardson

(1) Type and number of entities affected: Governmental agencies who desire commissions for special law enforcement officers.

(a) Direct and indirect costs or savings to

those affected:
1. First year: Statutory application fees.
2. Continuing costs or savings: Statutory application fees.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Minimal cost to the agency to present necessary paperwork and forms supplied by the cabinet to be filed for processing the application.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The cabinet is already providing this service.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: These requirements will facilitate prompt and efficient processing of applications for SLEO commissions.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This system and its forms and applications utilized are already being utilized; it is merely being set forth by regulation to facilitate awareness of the administration of SLEO Act.

Tiering:
Was tiering applied? No. The new regulation only applies to one class of entities, i.e., governmental agencies who wish to have special law enforcement officers commissioned by the Justice Cabinet.

JUSTICE CABINET

500 KAR 2:020. Filing and processing SLEO commissions.

RELATES TO: KRS 61.900 through 61.930
PURSUANT TO: KRS. 61.904
NECESSITY AND FUNCTION: This regulation provides criteria and procedures required and applicable for filing and processing applications for commissions to be a special law enforcement officer as required by KRS 61.904 to be promulgated by the Secretary of the Justice Cabinet to carry out the provisions of KRS 61.900 to 61.930.

Section 1. Qualifications to Apply for Commission as a Special Law Enforcement Officer. To qualify for a commission as a special law enforcement officer pursuant to KRS 61.900 to 61.930, an individual shall present satisfactory evidence of compliance with the conditions and requirements set forth in KRS 61.906.

Section 2. Application for Commission as a Special Law Enforcement Officer. Applications from the governmental units shall be sent to the Justice Cabinet SLEO Program Administrator and comply with the following requirements:
(1) Applicants shall meet all of the requirements of the SLEO Act before a commission shall be granted.
(2) The applicant shall complete two (2) notarized applications with the necessary information as specified therein and in these regulations. The governmental unit whose property is being protected shall be listed as indicated on the application forms. A copy of the applicant's high school diploma or GED certificate, a certified copy of the applicant's birth certificate, along with two (2) recent photographs of the individual (full face) approximately three (3) inches by five (5) inches and taken within the last thirty (30) days of the date the application is submitted and the application fee shall be attached to the applications. If the applicant is a veteran, a copy of his military release (Form DD-214) shall also accompany the applications. The application forms shall be signed by an authorized executive official of the requesting governmental unit.
(3) The following fees shall be paid: applications, examinations, and training for commissions. These fees are nonrefundable and shall be in the form of a check or money order made payable to the Kentucky State Treasurer.
(a) With the initial application, a fee of twenty-five (25) dollars is required.
(b) With application for renewal, a fee of twenty (25) dollars is required.
(c) Prior to any written examination approved by the Kentucky law enforcement council, a fee of fifteen (15) dollars is required.
(d) Prior to any practical examinations on firearms proficiency approved by the council, a fee of twenty (20) dollars is required.
(e) Prior to any training program approved by the Kentucky Law Enforcement Council a reasonable fee as determined by the secretary to cover the cost of training is required.
(4) All arrests and convictions including traffic offenses, violations, misdemeanors or felonies as requested on the application. Any false, misleading, or withholding of information requested on the application or by the Justice Cabinet investigator, shall be grounds for rejection without further consideration. The applicant's affidavit shall be signed and notarized on the application.
(5) The applicant shall supply the necessary information to the SLEO program administrator for criminal history information record review. The applicant shall provide his name and detailed personal description.
(6) If the applicant's fingerprints are not on file with the Kentucky State Police Criminal Record Section, the SLEO program administrator shall make arrangements to have the applicant fingerprinted.
(7) The application shall contain the Authority to Release Information Form which allows the release of all necessary information to the SLEO program administrator. It shall be signed by the applicant and witnessed by a second person.
(8) A Letter of Intent Form shall be filed with each application by the governmental unit giving the name of applicant and the specific public property to be protected. This letter is to accompany the application forms for SLEO initial application or renewals.

(9) The applicant shall arrange for an interview with the SLEO program administrator.

(10) All SLEO officers shall be familiar with the provisions of the SLEO Act (KRS 61.900-61.930), the regulations pursuant thereto, and the penalties imposed for violating the SLEO Act and its regulations. In addition, the officers shall be familiar with KRS 61.300, 61.990, 61.991, 62.010 and 62.990.

(11) If the application is defective or in conflict with the SLEO Act or regulations, the application shall be returned to the governmental unit concerned. If the application can be corrected, it may be resubmitted at no additional cost if it is resubmitted within sixty (60) days of the original submission date.

(12) If the applications and all required documents are in order, and if the criminal history information record review and background investigation are favorably completed, the SLEO program administrator shall notify the Department of Criminal Justice Training concerning any training and/or testing the applicant needs in order to satisfy the requirements of KRS 61.906(2)(f)1, 2, and 3.

(13) In notifying the Department of Criminal Justice Training, the program administrator shall describe the training and/or tests needed by the applicant. The Department of Criminal Justice Training shall schedule and conduct the training and/or testing and collect the related fees as prescribed in KRS 61.908(3), (4), and (5).

(14) The Department of Criminal Justice Training shall notify the SLEO program administrator the results of the training upon completion, and that the related training fees have been satisfied.

Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a special law enforcement officer shall be validated and granted as follows:

(1) When the applicant has successfully satisfied the requirements of the act, a commission certificate and a recommendation is forwarded by the SLEO program administrator to the secretary for review. After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file.

(2) When a commission is granted, the commission and the applications shall be forwarded by the Justice Cabinet to the governmental unit whose property is to be protected. The appointed applicant shall promptly take both applications to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment. The county clerk shall then complete and sign the clerk's attestation on the applications and retain one (1) copy for filing purposes in the county clerk's office in accordance with the statute. The applicant shall return the second application signed by the clerk to the governmental unit. The governmental unit shall then return the second copy of the application to the Justice Cabinet SLEO program administrator for the purpose of indicating that the oath was administered and this it is filed with the county clerk. The governmental agency shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the application to the Justice Cabinet program administrator, otherwise, the commission shall be revoked in accordance with KRS 62.010 and 62.990. The commission certificate shall be kept by the governmental agency so long as the officer is employed or until such time that his authority is terminated by action of the local government unit and/or the Justice Cabinet Secretary.

(3) The SLEO Commissions are issued for a period of two (2) years, provided that the officer continues to meet all statutory and regulatory criteria.

(4) When the SLEO officer has taken the constitutional oath of office, the governmental unit shall issue an identification card which is to be carried by the SLEO officer whenever he is acting under the authority of KRS 61.900-61.930. The identification card shall be presented as requested by any duly sworn peace officer or Justice Cabinet official and is subject to control by the Justice Cabinet. If for any reason a SLEO officer is terminated or otherwise relieved of his duties as a SLEO officer by the governmental unit or the Justice Cabinet, he shall immediately return this identification card to the officer's governmental unit who shall return the same to the SLEO program administrator.

(5) A notice shall be forwarded to the governmental unit concerning any officer whose appointment has been suspended or revoked by the secretary. The governmental unit shall maintain current files and make renewal applications at least thirty (30) days prior to the officer's expiration date.

(6) The SLEO commission certificate shall be held by the governmental units and shall be available for inspection by the Justice Cabinet program administrator or his designee. The commission certificate remains the property of the Justice Cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Special Provisions. (1) Grandfather clause. According to the provisions of the SLEO Act, persons who were special local peace officers pursuant to KRS 61.360 and in good standing and holding unexpired commissions on December 31, 1976, may apply through a governmental unit or agency for a direct commission as a special law enforcement officer in accordance with KRS 61.906. An official for the governmental unit or agency shall sign and submit a new set of applications with the filing fee on behalf of the applicant. The applicant shall undergo a current background investigation.

(2) Training waiver. According to the provisions of the SLEO Act, an applicant may apply for a training waiver under the following conditions and upon providing sufficient proof of past police experience, or military records, or examination records, that substantiates that the applicant meets the waiver requirements set forth in KRS 61.906.

Section 5. Renewals. A letter of intent from the governmental unit stating its request to renew a commission and a new set of applications for each individual involved shall be filed with the Justice Cabinet program administrator at least thirty (30) days before the expiration date of the existing commission. The applicant for renewal shall undergo a background investigation to bring his records up-to-date.

Section 6. Governmental Units Employing SLEO Officers - Records, Reports and Responsibility. All governmental units or agencies employing SLEO officers shall keep their files current as to the expiration date on each officer's commission and as follows:

(1) The unit or agency shall keep the individual officer's commission certificates on file, to be returned to the Justice Cabinet upon termination of the officer and/or his authority.

(2) The unit or agency shall post a copy of the SLEO regulations and a copy of KRS 61.900-61.930, 61.990 and 61.991 of the SLEO Act in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLEO officers.

(3) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental unit whose public property is being protected by the SLEO officer involved. However, the governmental unit or agency shall notify the Justice Cabinet SLEO program administrator by direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLEO officers. A follow-up written report is to be filed with the SLEO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by the agency. If formal charges are pending, the unit or agency shall advise the SLEO program administrator as to the specific charge(s), trial dates and the the final disposition of the charge(s).

(4) The unit or agency shall mail a current list of all active SLEO personnel to the SLEO program administrator by June 30 each year.

(5) The unit or agency shall issue each SLEO officer an identification card upon the individual's appointment. The identification card shall be billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches) and shall be composed as follows: contain on one (1) side a reduced copy of the officer's commission certificate (reduced by photographing or other method); and, on the other side contain a full-faced photograph of the officer, along with his name, date of birth, social security number and his signature. The identification card shall be encased in plastic.

(6) The unit or agency shall be responsible for obtaining the identification card from any officer terminated and remitting the same to the SLEO program administrator for destruction.

Section 7. Violations. All governmental units or agencies utilizing SLEO's shall be subject to inspection and investigation by the Justice Cabinet as circumstances may warrant for possible violations. Violations may result in prosecution and/or recommendation to the Secretary of Justice that the commission affected directly or indirectly be revoked.

Section 8. Revocation or Suspension of SLEO Commissions. If it is determined by the program administrator that KRS 61.910 of the SLEO Act applies to any active SLEO commissioned officer, the program administrator shall notify the secretary who shall revoke or suspend the commission of any special law enforcement officer whenever he shall determine:

(1) That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission; or

(2) That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the secretary or agents or officers thereof; or

(3) That the commission-holder has violated any statute, rule, regulation or order of the secretary, the violation of which the secretary determines to bear a reasonable relationship to eligibility for the commission. The SLEO program administrator shall notify the governmental unit involved to return the commission of the SLEO officer involved to the SLEO program administrator for the Justice Cabinet. The governmental unit responsible for the SLEO officer shall forward a letter to the SLEO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLEO identification card to the governmental unit involved who shall forward the card to the SLEO program administrator. The program administrator shall notify the county clerk in the officer's county of jurisdiction whenever a SLEO officer's commission has been suspended or revoked.

Section 9. Procedures for Investigating Complaints or Unusual Incidents Involving SLEO Officers. (1) Complaints or unusual incidents involving SLEO officers shall be handled by the governmental units whose public property is being protected by the SLEO officer involved. The governmental unit or agency shall be responsible for notification to the Justice Cabinet of any/all incidents involving their SLEO personnel as indicated herein.

(2) However, the Justice Cabinet program administrator or other assigned officers may investigate any and all complaints or unusual incidents involving SLEO officers, if there is reason to believe the provisions of KRS 61.900-61.930 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the Justice Cabinet shall become part of the official record of the SLEO officer involved.

NORMA C. MILLER, Secretary

APPROVED BY AGENCY: June 18, 1986

FILED WITH LRC: June 19, 1986 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled on August 21, 1986, at 1 p.m., in the Library Conference Room, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing at least five (5) days before the hearing, the following individual: Lucy B. Richardson, Attorney, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lucy B. Richardson

(1) Type and number of entities affected: Governmental agencies who desire commissions for special law enforcement officers.

(a) Direct and indirect costs or savings to those affected:

1. First year: Statutory application fees.

2. Continuing costs or savings: Statutory application fees.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Minimal cost to the agency to present necessary paperwork and forms supplied by the cabinet to be filed for processing the application.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The cabinet is already providing this service.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: These requirements will facilitate prompt and efficient processing of applications for SLEO commissions.
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This system and its forms and applications utilized are already being utilized; it is merely being set forth by regulation to facilitate awareness of the administration of SLEO Act.

Tiering:
Was tiering applied? No. The new regulation only applies to one class of entities, i.e., governmental agencies who wish to have special law enforcement officers commissioned by the Justice Cabinet.

JUSTICE CABINET

500 KAR 3:010. Definitions.

RELATES TO: KRS 61.360
PURSUANT TO: KRS 13A.100, 15A.160
NECESSITY AND FUNCTION: This regulation defines terms used in 500 KAR Chapter 3 which pertain to the administration of "The Special Local Peace Officer Act" by the Governor or his designee.

Section 1. Definitions. The following definitions shall apply in this chapter:
(1) "Secretary" shall mean the Secretary of the Justice Cabinet.
(2) "Cabinet" shall mean the Justice Cabinet.
(3) "Commission" shall mean a commission issued to an individual by the Secretary of Justice, entitling such individual to perform special local peace officer duties on specific private property.
(4) "Private property" shall mean specific real property currently owned by an individual, company or agency in the state of Kentucky.
(5) "Special local peace officer," as set forth in KRS 61.360:
(a) Shall mean one whose duties include the protection of specific private property from intrusion, entry, larceny, vandalism, abuse, waste or trespass; and
(b) Shall mean one whose duties include the prevention, observation or detection of, or apprehension for, unlawful activity on specific premises; and
(c) Shall mean one whose special duties include the control of the operation, parking of motor vehicles, bicycles and other vehicles, and the movement of pedestrian traffic on specific private property; and
(d) Shall mean one whose duties include the answering of any intrusion alarm on specific private property. (6) "SLPO program administrator" means the administrator appointed by the Secretary of the Justice Cabinet to administer the Special Local Peace Officer Program whose address is: SLPO Program Administrator, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky 40601.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: July 8, 1986
FILED WITH LRC: July 8, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled on August 21, 1986, at 1 p.m., in the Library Conference Room, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing at least five (5) days before the hearing, the following individual: Lucy B. Richardson, Attorney, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lucy B. Richardson
(1) Type and number of entities affected: Private property owners who employ special local peace officers.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No.

JUSTICE CABINET

500 KAR 3:020. Filing and processing SLPO commissions.

RELATES TO: KRS 61.360
PURSUANT TO: KRS. 13A.100, 15A.160
NECESSITY AND FUNCTION: This regulation states the criteria and procedures for filing and processing applications for special local peace officer commissions.

Section 1. Qualifications to Apply for Commission as a Special Local Peace Officer. To qualify for a commission as a special local peace officer, an individual shall present satisfactory evidence of compliance with the conditions and requirements set forth in KRS 61.360.

Section 2. Application for Commission as a Special Local Peace Officer. Applications from the property owner or his authorized agent shall be sent to the Justice Cabinet SLPO program administrator and comply with the following requirements:

(1) Applicants shall meet all of the requirements of KRS 61.360 before a commission shall be granted. Each individual who qualifies may hold additional commissions for different property locations, but may only be commissioned in his residential county.

(2) The applicant shall complete two (2) notarized applications with the necessary information as specified therein and in these regulations. The property owner or his agent whose property is being protected shall be listed as indicated on the application. A certified copy of the applicant's birth certificate, along with two (2) recent photographs of the individual (full face approximately three (3) inches by five (5) inches and taken within the last thirty (30) days of the date the application is submitted) and the application fee shall be attached to the applications. If the applicant is a veteran, a copy of his military release (Form DD-214) shall also accompany the applications. The application forms shall be signed by the property owner or his agent.

(3) The ten (10) dollar application fee is non-refundable and shall be in the form of a check or money order made payable to the Kentucky State Treasurer.

(4) All arrests and convictions including traffic offenses, violations, misdemeanors or felonies shall be provided as requested on the application. Any false, misleading, or withholding of information requested on the application or by the Justice Cabinet investigator, shall be grounds for rejection without further consideration. The applicant's affidavit shall be signed and notarized.

(5) The applicant shall supply the necessary information to the SLPO program administrator for criminal history information record review. The applicant shall provide his name and detailed personal description.

(6) If the applicant's fingerprints are not on file with the Kentucky State Police Criminal Record Section, the SLPO program administrator shall make arrangements to have the applicant fingerprinted.

(7) The application shall contain the Authority to Release Information Form which allows the release of all necessary information to the SLPO program administrator. It shall be signed by the applicant and notarized or may be witnessed by a Justice Cabinet official. The applicant shall also sign the Acknowledgement Notice Form which indicates he has received a copy of the SLPO Act and that he acknowledges that his authority is limited and restricted under the Act, that it does not give him the right or authority to carry a weapon off the premises of the said property, that it is his responsibility to have and/or gain the necessary knowledge and secure any training relating to the act, regulations and any/all statutes dealing with his duties of enforcement.

(8) A Letter of Intent Form shall be filed with each application by the property owner or his agent giving the name of applicant and the specific private property to be protected. This letter is to accompany the application forms for SLPO initial application or renewals.

(9) The applicant shall arrange for an interview with the SLPO program administrator.

(10) All SLPO officers shall be familiar with the provisions of the SLPO Act (KRS 61.360), the regulations pursuant thereto, and the penalties imposed for violating the SLPO Act and its regulations. In addition, the officers shall be familiar with KRS 61.300, 61.991(2), 62.010 and 62.990.

(11) If the application is defective or in conflict with the SLPO Act or regulations, the application shall be returned to the property owner or his agent. If the application can be corrected, it may be resubmitted at no additional cost if it is resubmitted within sixty (60) days of the original submission date.

Section 3. The Grant of the Commission and the Required Oath of Office. A commission for a special local peace officer shall be validated and granted as follows:

(1) When the applicant has successfully satisfied the requirements of the act, a commission certificate and a recommendation is forwarded by the SLPO program administrator to the secretary for review. After the commission is issued by the secretary, a copy of the commission shall be placed in the officer's file.

(2) When a commission is granted, the commission and the applications shall be forwarded by the Justice Cabinet to the property owner or his agent whose property is to be protected. The appointed applicant shall promptly take both applications to the county clerk in the county where the applicant is to serve and shall take the constitutional oath of office within thirty (30) days after notice of appointment. The county clerk shall then complete and sign the clerk's attestation on the applications and retain one (1) copy for filing purposes in the county clerk's office in accordance with the statute. The applicant shall return the second application signed by the clerk to the property owner or his agent. The property owner or his agent shall then return the second copy of the application to the Justice Cabinet SLPO program administrator for the purpose of indicating that the oath was administered and that it is filed with the county clerk. The property owner or his agent shall be allowed thirty (30) days to arrange for the appointed applicant to take the oath of office and return the application to the Justice Cabinet program administrator, otherwise, the

commission shall be revoked in accordance with KRS 62.010 and 62.990. The commission certificate shall be kept by the property owner or his agent so long as the officer is employed or until such time that his authority is terminated by action of the property owner or his agent and/or the Justice Cabinet Secretary.

(3) The SLPO Commissions are issued for a period of two (2) years, provided that the officer continues to meet all statutory and regulatory criteria.

(4) When the SLPO officer has taken the constitutional oath of office, the property owner or his agent shall issue an identification card which is to be carried by the SLPO officer whenever he is acting under the authority of KRS 61.360. The identification card shall be presented as required by any duly sworn peace officer or Justice Cabinet official and is subject to control by the Justice Cabinet. If for any reason a SLPO officer is terminated or otherwise relieved of his duties as a SLPO officer by the property owner or his agent or the Justice Cabinet, he shall immediately return this identification card to the officer's property owner or his agent who shall return the same to the SLPO program administrator.

(5) A notice shall be forwarded to the property owner or his agent concerning any officer whose appointment has been suspended or revoked by the secretary. The property owner or his agent shall maintain current files and make renewal applications at least thirty (30) days prior to the commission's expiration date.

(6) The SLPO commission certificate shall be held by the property owner or his agent and shall be available for inspection by the Justice Cabinet program administrator or his designee. The commission certificate remains the property of the Justice Cabinet and is to be returned upon the officer's authority being withdrawn for any reason.

Section 4. Renewals. A letter of intent from the property owner or his authorized agent stating a request to renew a commission and a new set of applications for each individual involved shall be filed with the Justice Cabinet program administrator at least thirty (30) days before the expiration date of the existing commission. The applicant for renewal shall undergo a background investigation to bring his records up-to-date.

Section 5. The Property Owner or his Agent Employing SLPO Officers - Records, Reports and Responsibility. Each property owner, his agent, or each agency employing SLPO officers shall keep his files current as to the expiration date on each officer's commission and as follows:

(1) The property owner or his agent shall keep the individual officer's commission certificates on file, to be returned to the Justice Cabinet upon termination of the officer and/or his authority.

(2) The property owner or his agent shall post a copy of these regulations and a copy of KRS 61.360 and 61.990 in a conspicuous location in any office or building that is designated security headquarters for persons operating as SLPO officers.

(3) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner or his agent whose private property is being protected by the SLPO officer involved. However, the property owner or his agent shall notify the Justice Cabinet SLPO program administrator by direct verbal communication within twenty-four (24) hours of any reported incident involving the misconduct or unlawful act by any of its SLPO officers. A written report shall be filed with the SLPO program administrator, within thirty (30) days of the original oral report, setting forth the details of the incident and listing any action taken by the property owner or his agent. If formal charges are pending, the property owner or his agent shall advise the SLPO program administrator as to the specific charge(s), trial dates and the the final disposition of the charge(s).

(4) The property owner or his agent shall mail a current list of all active SLPO personnel to the SLPO program administrator by June 30 each year.

(5) The property owner or his agent shall issue each SLPO officer an identification card upon the individual's appointment. The identification card shall be billfold size (approximately two and one-fourth (2 1/4) inches by three and one-half (3 1/2) inches) and shall be composed as follows: contain on one (1) side a reduced copy of the officer's commission certificate (reduced by photographing or other method); and, on the other side contain a full-faced photograph of the officer, along with his name, date of birth, social security number and his signature. The identification card shall be encased in plastic.

(6) The property owner or his agent shall be responsible for obtaining the identification card from any officer terminated and remitting the same to the SLPO program administrator for destruction.

Section 6. Violations. All property owners, agents or agencies utilizing SLPO's shall be subject to inspection and investigation by the Justice Cabinet as circumstances may warrant for possible violations. Violations may result in prosecution and/or recommendation to the Secretary of Justice that the commission affected directly or indirectly be revoked.

Section 7. Revocation or Suspension of SLPO Commissions. If it is determined by the program administrator that KRS 61.360 of the SLPO Act applies to any active SLPO commissioned officer, the program administrator shall notify the secretary who shall revoke or suspend the commission of any special local peace officer whenever he shall determine:

(1) That the commission-holder does not meet, or no longer meets the requirements and conditions for the commission; or

(2) That the commission-holder has knowingly falsified an application or portion thereof, or has knowingly made any false or misleading statement of a material fact to the secretary or agents or officers thereof; or

(3) That the commission-holder has violated any statute, rule, regulation or order of the secretary, the violation of which the secretary determines to bear a reasonable relationship to eligibility for the commission. The SLPO program administrator shall notify the property owner or his agent involved to return the commission of the SLPO officer involved to the SLPO program administrator for the Justice Cabinet. The property owner or his agent responsible for the

SLPO officer shall forward a letter to the SLPO officer involved stating that his commission has been revoked or suspended and that he shall immediately return the SLPO identification card to the property owner or his agent who shall forward the card to the SLPO program administrator. The program administrator shall notify the county clerk in the officer's county of jurisdiction whenever a SLPO officer's commission has been suspended or revoked.

Section 8. Procedures for Investigating Complaints or Unusual Incidents Involving SLPO Officers. (1) Complaints or unusual incidents involving SLPO officers shall be handled by the property owner or his agent whose private property is being protected by the SLPO officer involved. The property owner or his agent shall be responsible for notification to the Justice Cabinet of any/all incidents involving their SLPO personnel as indicated herein.

(2) However, the Justice Cabinet program administrator or other assigned officers may investigate any and all complaints or unusual incidents involving SLPO officers, if there is reason to believe the provisions of KRS 61.360 or other applicable laws have been violated and an investigation is necessary.

(3) Any investigation conducted by the Justice Cabinet shall become part of the official record of the SLPO officer involved.

NORMA C. MILLER, Secretary
APPROVED BY AGENCY: July 8, 1986
FILED WITH LRC: July 8, 1986 at 1 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled on August 21, 1986, at 1 p.m., in the Library Conference Room, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing at least five (5) days before the hearing, the following individual: Lucy B. Richardson, Attorney, Justice Cabinet, 417 High Street, 3rd Floor, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lucy B. Richardson
(1) Type and number of entities affected: Private property owners who employ special local peace officers.
(a) Direct and indirect costs or savings to those affected: N/A. Licensing fee required by statute.
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Application and supporting documentation required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A. Regulations codify existing practice.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Forms - minor costs.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 12:050. Driver licensing fee schedule; and licensees under age 21.

RELATES TO: KRS 186.400 through 186.640, 281.726
PURSUANT TO: KRS 186.400
NECESSITY AND FUNCTION: KRS 186.531 requires that the license issued to a driver under the age of twenty-one (21) have an "under twenty-one (21)" designation and that the fee be prorated. This administrative regulation sets forth the license fee schedule for such licenses. This administrative regulation also includes the fee schedule for the issuance of any other license for a driver over the age of twenty-one (21) or nondriver identification card which license or identification card is valid for less than four (4) years. Administrative regulation includes the fee schedule for the issuance of any other license or nondriver identification card which is valid for less than four (4) years.

Section 1. Definitions. (1) "Driver's license" as used in KRS 186.531 for the purposes of this administrative regulation shall mean any operator's, motorcycle, moped, chauffeur's or combination operator's-motorcycle license issued by a circuit court clerk which entitles the possessor to operate a motor vehicle or moped on the public highways of Kentucky.

(2) "Add-on" shall mean the expansion of a driving privilege to include the operation of another type of motor vehicle.

(3) "Under twenty-one (21)" license shall mean a driver's license as defined in subsection (1) of this section or nondriver identification card issued to an individual who is under the age of twenty-one (21). An "under twenty-one (21)" license or nondriver identification card shall be specially designated by color coding and by the use of the phrase "under twenty-one (21)."

Section 2. Any applicant requesting a duplicate, add-on, or other replacement license who holds a valid driver's license as defined herein, or a nondriver identification card issued prior to July 15, 1986 shall retain the original license or identification card expiration date. Any applicant requesting an original or renewal driver's license prior to his 21st birthday shall be issued a license to expire on his 21st birthday.

Section 3. Under Twenty-one (21) Applicants. The fee schedule for an applicant under the age of twenty-one (21) to obtain a driver's license

or license renewal is outlined in Appendix A. Such original license or renewal expires on the licensee's 21st birthday. Pursuant to statute, the licensee has thirty (30) days after the expiration of the license in which to renew.

Section 4. Add-on Applicants. The fee schedule for an applicant who has either an operator's or motorcycle license and who is applying for a combination license is outlined in Appendix B.

Section 5. Duplicate License Applicants. The fee schedule for an applicant whose valid license has been lost or destroyed and who is applying for a duplicate and an add-on license is outlined in Appendix C. The fee for a duplicate license without an add-on or a duplicate nondriver identification card is the two (2) dollar fee set forth in KRS 186.531.

Section 6. Duplicate, Add-on, or Other Replacement License or Nondriver Identification Card. An applicant under the age of twenty-one (21), who is applying for a duplicate, an add-on or any other type of replacement or modified license, or is applying for a duplicate nondriver identification card, shall be issued an "under twenty-one (21)" license as specified in KRS 186.412. The license or nondriver identification card expiration date shall be the same as on the original license as provided by Section 2 of this regulation. If the licensee or nondriver identification card holder reaches his 21st birthday prior to the expiration of that license or identification card, on or after his 21st birthday he may request a replacement license which does not have the "under twenty-one (21)" code from the circuit court clerk in his county of residence.

APPENDIX A
ORIGINAL OR COMBINATION LICENSES FOR UNDER AGE 21 APPLICANTS

1. Operator's License; Motorcycle License; Moped License. Applicant is under 21 years of age and is applying for an operator's license, a motorcycle license or a moped license.

Applicant's Age	License Validity Period	Cost
16-year old	49-60 months	$10.00
17-year old	37-48 months	8.00
18-year old	25-36 months	6.00
19-year old	13-24 months	4.00
20-year old	1-12 months	2.00

2. Combination Operator's-Motorcycle License. Applicant is under 21 years of age and is applying for a combination operator's-motorcycle license.

Applicant's Age	License Validity Period	Cost
16-year old	49-60 months	$17.50
17-year old	37-48 months	14.00
18-year old	25-36 months	10.50
19-year old	13-24 months	7.00
20-year old	1-12 months	3.50

3. Combination Operator's-Chauffeur's License. Applicant 18, 19, or 20 years old is applying for an operator's license for the first time in Kentucky and a chauffeur's license at the same time.

Applicant's Age	License Validity Period	Cost
18-18 1/2 yrs. old	31-36 months	$12.00
18 1/2-19 yrs. old	25-30 months	11.00
19-19 1/2 yrs. old	19-24 months	8.00
19 1/2-20 yrs. old	13-18 months	7.00
20-20 1/2 yrs. old	7-12 months	4.00
20 1/2-21 yrs. old	1- 6 months	3.00

4. Combination Operator's Motorcycle-Chauffeur's License. Applicant 18, 19, or 20 years old is applying for an operator's license for the first time in Kentucky and a motorcycle and chauffeur's license at the same time.

Applicant's Age	License Validity Period	Cost
18-18 1/2 yrs. old	31-36 months	$16.50
18 1/2-19 yrs. old	25-30 months	15.50
19-19 1/2 yrs. old	19-24 months	11.00
19 1/2-20 yrs. old	13-18 months	10.00
20-20 1/2 yrs. old	7-12 months	5.50
20 1/2-21 yrs. old	1- 6 months	4.50

APPENDIX B
ADD-ON LICENSES

1. Add-on Motorcycle License; Add-on Operator's License. Applicant has a valid Kentucky motorcycle license and is applying to add-on an operator's license or has a valid Kentucky operator's license and is applying to add-on a motorcycle license.

License Validity Period	Cost
49-60 months	$ 7.50
37-48 months	6.00
25-36 months	4.50
13-24 months	3.00
1-12 months	1.50

2. Add-on Chauffeur's License. Applicant 18 years of age or greater has a valid Kentucky operator's license or combination operator's-motorcycle license and is applying to add-on a chauffeur's license.

License Validity Period	Cost
43-48 months	$ 8.00
37-42 months	7.00
31-36 months	6.00
25-30 months	5.00
19-24 months	4.00
13-18 months	3.00
7-12 months	2.00
1- 6 months	1.00

3. Add-on Motorcycle and Chauffeur's License. Applicant 18 years of age or greater has a valid Kentucky operator's license and is applying to add-on both a motorcycle and chauffeur's license..

License Validity Period	Cost
43-48 months	$14.00
37-42 months	13.00
31-36 months	10.50
25-30 months	9.50
19-24 months	7.00

13-18 months	6.00
7-12 months	3.50
1- 6 months	2.50

4. Add-on Operator's and Chauffeur's License. Applicant 18 years of age or greater has a Kentucky motorcycle license and is applying to add-on both an operator's and chauffeur's license.

License Validity Period	Cost
43-48 months	$14.00
37-42 months	13.00
31-36 months	10.50
25-30 months	9.50
19-24 months	7.00
13-18 months	6.00
7-12 months	3.50
1- 6 months	2.50

APPENDIX C
DUPLICATE LICENSE

1. Duplicate Operator's License, Add-on Motorcycle License. Applicant's valid Kentucky operator's license has been lost or destroyed. He is applying for a duplicate operator's license and to add-on a motorcycle license.

License Validity Period	Cost
49-60 months	$ 9.50
37-48 months	8.00
25-36 months	6.50
13-24 months	5.00
1-12 months	3.50

2. Duplicate Motorcycle License, Add-on Operator's License. Applicant's valid Kentucky motorcycle license has been lost or destroyed. He is applying for a duplicate motorcycle license and to add-on an operator's license.

License Validity Period	Cost
49-60 months	$ 9.50
37-48 months	8.00
25-36 months	6.50
13-24 months	5.00
1-12 months	3.50

3. Duplicate Operator's License, Add-on Chauffeur's License. Applicant 18 years of age or greater has lost or destroyed his valid Kentucky operator's license. He is applying for a duplicate operator's license and to add-on a chauffeur's license.

License Validity Period	Cost
43-48 months	$10.00
37-42 months	9.00
31-36 months	8.00
25-30 months	7.00
19-24 months	6.00
13-18 months	5.00
7-12 months	4.00
1- 6 months	3.00

4. Dupilcate Operator's License, Add-on Motorcycle and Chauffeur's License. Applicant 18 years of age or greater has lost or destroyed his valid Kentucky operator's license. He is applying for a duplicate operator's license and to add-on a chauffeur's license and motorcycle license.

License Validity Period	Cost
43-48 months	$16.00
37-42 months	15.00
31-36 months	12.50
25-30 months	11.50
19-24 months	9.00
13-18 months	8.00
7-12 months	5.50
1- 6 months	4.50

5. Duplicate Motorcycle License, Add-on Operator's and Chauffeur's License. Applicant 18 years of age or greater has lost or destroyed his valid Kentucky motorcycle license. He is applying for a duplicate motorcycle license and to add-on a chauffeur's license and motorcycle license.

License Validity Period	Cost
43-48 months	$16.00
37-42 months	15.00
31-36 months	12.50
25-30 months	11.50
19-24 months	9.00
13-18 months	8.00
7-12 months	5.50
1- 6 months	4.50

C. LESLIE DAWSON, Secretary
JOHN K. PENROD, Commissioner
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 15, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public comment hearing on this proposed administrative regulation will be held on August 26, 1986 at 10:30 a.m. local prevailing time in the fourth floor conference room of the State Office Building. The State Office Building is located on the corner of High and Clinton Streets in Frankfort, Kentucky. Any person who intends to attend this meeting must, by August 21, 1986, in writing so notify: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 1003 State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All Kentucky residents who possess or apply for a driver's license.
(a) Direct and indirect costs or savings to those affected: No cost or savings - sets forth the schedule needed to comply with state law.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None on the public, however, the circuit court clerks will have to report funds collected.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing

costs:
(b) Reporting and paperwork requirements: The reports received from the circuit court clerks will have to be processed.
(3) Assessment of anticipated effect on state and local revenues: No changes in anticipated funds to be received.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Rejected the idea of not adopting a regulation at all because KRS Chapter 13A requires that all fees not specifically set forth in statute be included in an administrative regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None

Tiering:
Was tiering applied? Yes.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 1:010. Liability self-insurance groups.

RELATES TO: KRS 304.1-120
PURSUANT TO: KRS 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation establishes minimum standards for liability self-insurance groups to assure that such groups are providing adequate coverage for professional or public liability risks, have established a comprehensive loss prevention and risk management program coordinated with an effective claims management system, and have provided the appropriate information to the Department of Insurance.

Section 1. Scope. This regulation applies to liability self-insurance groups established or which have expanded the kinds of risks protected by such groups pursuant to KRS 304.1-120 on or after July 15, 1986. Groups which are issued a certificate of filing by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the Kentucky Insurance Code and regulations except as provided in this regulation.

Section 2. Definitions. (1) "Administrator" means an individual, partnership, or corporation engaged by a liability self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.
(2) "Bona fide association" as used in KRS 304.1-120 is an association which has a substantial non-insurance purpose.
(3) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.
(4) "Deceptive" refers to an act, practice, or statement which has the tendency or capacity to deceive, without regard to whether there is intent to deceive or whether any person has suffered loss or injury as a result of the act, practice, or statement.
(5) "Insolvent" or "insolvency" means the inability of a liability self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.
(6) "Liability self-insurance group" means a group established pursuant to KRS 304.1-120(6).
(7) "Person" has the meaning set forth in KRS 304.1-120.
(8) "Qualified actuary" means a member of the American Academy of Actuaries or a fellow of the Casualty Actuarial Society.
(9) "Service company" means a person or entity which provides services not provided by the administrator, including, but not limited to, claims adjustment, safety engineering, compilation of statistics in preparation of contribution and assessment, loss, and tax reports, preparation of other required self-insurance reports, development of members' contributions, assessments, and fees, and administration of a claim fund.
(10) "Unfair" refers to an act, practice, or statement which is unconscionable.

Section 3. Filing With the Commissioner Required. No person shall act as a liability self-insurance group unless it has been issued a certificate of filing by the commissioner.

Section 4. Qualifications for Initial Filing and Continued Authority to Act as a Liability Self-insurance Group. (1) A proposed liability self-insurance group shall file with the commissioner its application for a certificate of filing accompanied by a non-refundable filing fee of five (5) dollars. The application shall include the group's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:
(a) Proof of compliance with the provisions of subsection (2) of this section.
(b) A copy of the articles of association.
(c) A copy of agreements with the administrator and with any service company.
(d) A copy of the by-laws of the proposed group.
(e) A copy of the agreement between the group and each member jointly and severally binding the group and each member thereof to comply with the provisions of this regulation and the decision of the trustees for operation of the liability self-insurance group.
(f) Designation of the initial board of trustees and administrator.
(g) The address in this state where books and records of the group will be maintained at all times.
(h) A pro forma financial statement on a form acceptable to the commissioner showing financial ability of the group to pay the professional or public liability obligations of its members.
(2) To obtain and to maintain its certificate

of filing a liability self-insurance group shall comply with the following financial requirements:

(a) Liability self-insurance groups shall provide security in the form and the amount prescribed by the commissioner as follows:

1. A surety bond issued by a corporate surety authorized to transact business in Kentucky; or

2. Any financial security endorsement issued as part of an acceptable excess insurance contract issued by an authorized insurer may be used to meet all or part of the security requirement. The bond or financial security endorsement shall be for the benefit of the insured creditors solely to pay claims and associated expenses and payable upon the failure of the group to pay professional or public liability claims it is legally obligated to pay. The commissioner may establish and adjust from time to time the requirements for the amount of security based on differences among groups in their size, types or business, years in existence, or other relevant factors.

(b) Specific and aggregate excess insurance in a form, in an amount, and issued by an insurer acceptable to the commissioner.

(c) A liability self-insurance group shall provide a fidelity bond for the administrator and a fidelity bond for the service company in forms and amounts prescribed by the commissioner. The commissioner may also require the service company providing claim service to furnish a performance bond in a form and amount prescribed by the commissioner.

(3) A liability self-insurance group shall notify the commissioner immediately of any change in the information required to be filed under subsection (1) of this section or in the manner of its compliance with subsection (2) of this section.

(4) The commissioner shall issue to the liability self-insurance group a certificate of filing upon finding that the proposed group has met all requirements or the commissioner shall issue a written statement refusing such certificate, setting forth the reasons for such refusal.

(5) Any liability self-insurance group accepting a certificate of filing pursuant to this regulation is deemed to have appointed the Secretary of State as its attorney to receive service of legal process issued against it in this state. Such appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this state any professional or public liabilities.

Section 5. Termination of Certificate of Filing. (1) A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the commissioner pursuant to Section 16 of this regulation.

(2) The commissioner shall not grant the request of a liability self-insurance group to terminate its certificate of filing unless the group has insured or reinsured all professional or public liabilities with an authorized insurer under an agreement filed with and approved in writing by the commissioner. Such obligations shall include both known claims and expenses and claims incurred but not reported and expenses.

(3) Subject to filing with the commissioner, a liability self-insurance group may merge with another liability self-insurance group. As a result of any such merger, the resulting liability self-insurance group must assume in full all obligations of the constituent groups.

Section 6. Board of Trustees: Membership, Powers, Duties, and Prohibitions. (1) Each group shall be operated by a Board of Trustees which shall consist of not less than two (2) persons whom the members of a group elect for stated terms of office. The trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the liability self-insurance group, including, but not limited to, assuring that there is adequate funding to cover professional or public liabilities, assuring that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.

(2) The Board of Trustees shall:

(a) Maintain responsibility for all moneys collected or disbursed from the group and segregate all moneys into a claims fund account and an administrative fund account.

(b) Maintain minutes of its meetings and make such minutes available to the commissioner.

(c) Designate an administrator to carry out the policies established by the Board of Trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

(d) Retain an independent certified public accountant and a qualified actuary to prepare the statement of financial condition required by Section 9 of this regulation.

(3) The Board of Trustees shall not:

(a) Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the commissioner.

(b) Permit the loan of any moneys to or borrow any moneys from the group or in the name of the group.

Section 7. Group Membership, Termination, and Liability. (1) An employer joining a liability self-insurance group after the group has been issued a certificate of filing shall submit an application for membership to the Board of Trustees or its administrator and enter into the indemnity agreement required by Section 4(1)(e) of this regulation. Membership takes effect no earlier than each member's date of application. The application for membership and its approval shall be maintained as permanent records of the Board of Trustees.

(2) Individual members of a liability self-insurance group shall be subject to cancellation by the group pursuant to the by-laws of the group. In addition, individual group members may elect to terminate their participation in the group.

(3) A liability self-insurance group shall pay all professional and public liabilities for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for professional or public liability obligations of the group and its members which were incurred during the cancelled or terminated group

members' period of membership. A group member is not relieved of its professional or public liabilities incurred during its period of membership except through payment by the group or the member of liabilities.

(4) The insolvency or bankruptcy of a group member does not relieve the liability self-insurance group or any other group member of liability for the payment of professional or public liabilities incurred during the insolvent or bankrupt group member's period of membership.

(5) This section does not negate any statutes or judicial decisions limiting defenses.

Section 8. Service Companies. (1) No service company or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect interest in, an administrator. No administrator or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

(2) The service contract shall state that unless the commissioner permits otherwise the service company shall handle, to their conclusion, all claims and other obligations incurred during the contract period.

Section 9. Financial Statements and Other Reports. (1) Each liability self-insurance group shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant on or before March 1 for the preceding calendar year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for:

(a) Known claims and expenses associated therewith.

(b) Claims incurred but not reported and any expenses associated therewith.

(c) Unearned contributions and assessments.

(d) Bad debts, which reserves shall be shown as liabilities.

(e) An actuarial opinion by a qualified actuary regarding reserves for known claims and expenses associated therewith.

(f) An actuarial opinion by a qualified actuary regarding reserves for claims incurred but not reported and expenses associated therewith.

(2) No person shall make any deceptive statement or fail to make any statement which would make a statement not deceptive in connection with the solicitation of membership of a group.

(3) The commissioner may prescribe the format and frequency of other reports which may include, but not be limited to, summary loss reports and quarterly financial statements.

Section 10. Trade Practices. (1) No person shall make any materially deceptive statement or omit material facts in connection with solicitation for membership in a liability self-insurance group.

(2) Unfair claims settlement practices. Liability self-insurance groups shall:

(a) Respond to claimant inquiries which reasonably suggest that a response is expected within fifteen (15) working days.

(b) Liability self-insurance groups shall respond to Department of Insurance inquiries concerning claims within fifteen (15) working days.

(c) Complete investigation of losses within thirty (30) days from the date the group has notice of a loss. Additional thirty (30) day periods may be taken if reasonably necessary and upon written notice to the claimant.

(d) Not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit without giving the claimant written notice at least sixty (60) days before the date on which such time limit may expire that the time limit may be expiring and may affect the claimant's rights.

(e) Not commit any other unfair or deceptive act or practice relating to claim settlement.

(3) Liability self-insurance groups shall not commit unfair or deceptive acts or practices under its certificate of filing from the commissioner.

Section 11. Investments. Funds not needed for current obligations may be invested by the Board of Trustees in investments recognized as sound investments.

Section 12. Rates and Underwriting Guidelines. Liability self-insurance groups shall file with the commissioner their rates, underwriting guidelines, and any changes therein prior to effectuation. Such filings shall be accompanied by a five (5) dollar filing fee per rate or guideline.

Section 13. Contribution and Assessment Payments; Reserves. (1) Liability self-insurance groups shall establish contribution and assessment payment plans.

(2) Liability self-insurance groups shall establish and maintain appropriate loss reserves which shall include reserves for:

(a) Known claims and expenses associated therewith; and

(b) Claims incurred but not reported and expenses associated therewith.

(3) Liability self-insurance groups shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

Section 14. Deficits and Insolvencies. (1) If the assets of a liability self-insurance group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this regulation, the group shall immediately levy an assessment upon its members for the amount needed to make up the deficiency.

(2) In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from surplus from a fund year other than the current fund year, administrative funds, assessment of the membership, if ordered by the group, or such alternate methods as the commissioner may approve or direct. The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

(3) If a liability self-insurance group fails to assess its members to make up such deficit within thirty (30) days, the commissioner shall order it to do so.

(4) If a liability self-insurance group fails to make the required assessment of its members within thirty (30) days after the commissioner orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date on which such assessment is made, or within such longer period of time as may be permitted by the commissioner, the group shall be deemed to be insolvent.

Section 15. Evidence of Coverage. (1) Every member of a liability self-insurance group shall receive written evidence of coverage by the group.

(2) All evidences of coverage issued pursuant to this section shall contain coverage terms, conditions, and exclusions.

(3) All evidences of coverage issued pursuant to this section shall contain the following disclosure in prominent, contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A LIABILITY SELF-INSURANCE GROUP WHICH HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION. GROUP MEMBERS MAY BE ASSESSED IN THE EVENT OF INSOLVENCY OF THE LIABILITY SELF-INSURANCE GROUP.

Section 16. Disciplinary Measures. (1) After a hearing or upon agreement by the liability self-insurance group, the commissioner may suspend or revoke the certificate of filing of a liability self-insurance group, impose a civil penalty of up to $5,000 per violation on a liability self-insurance group, or both, for:

(a) Violations of KRS 304.1-120 or this regulation;

(b) Obtaining a certificate of filing by unfair or deceptive means;

(c) Operating in a financially hazardous manner;

(d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or

(e) Unfair or deceptive business practices.

(2) In his discretion and without advance notice or a hearing thereon, the commissioner may suspend or revoke the certificate of filing of any liability self-insurance group as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced.

Section 17. Severability. If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 18. Effective Date. (1) This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

(2) As a courtesy to the Legislative Research Commission, the Department of Insurance states that it intends this regulation to be permanent. This statement does not constitute an admission of the constitutionality of 1986 Kentucky Acts c.499 (HB) 310) §§ 8 and 9.

GIL McCARTY, Commissioner
ROBERT M. DAVIS, Secretary
APPROVED BY AGENCY: July 8, 1986
FILED WITH LRC: July 10, 1986 at 3 p.m.
PUBLIC HEARING SCHEDULED: Persons with an interest in the subject matter of the proposed regulation may submit written comments to Gil McCarty, Commissioner, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602. A public hearing concerning the proposed regulation will be held on August 21, 1986, at 9 a.m. (ET) in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: SB 249, adopted by the 1986 General Assembly, allows any group of for-profit Kentucky corporations or any "bona fide association" to form a liability self-insurance group for professional or public liability risks. The statute sets forth certain standards which such groups must meet: they must provide adequate coverage for professional or public liability risks, they must establish a comprehensive loss prevention and risk management program coordinated with an effective claims management system, and they must provide information to the Department of Insurance. The proposed regulation establishes minimum standards for liability self-insurance groups to assure that the statutory standards are met. The proposed regulation accomplishes this by:

1. Specifying the information to be filed with the commissioner.
2. Requiring financial responsibility in the form of a surety bond or security endorsement to an excess insurance policy.
3. Requiring excess insurance.
4. Requiring financial statements to be audited by independent certified public accountants and opinions by qualified actuaries as to the adequacy of reserves, not only for known claims and expenses, but for incurred but not reported claims and expenses.
5. Prohibiting unfair or deceptive trade practices.
6. Requiring that any deficits be made up.
7. Requiring evidence of coverage to be given to group members.
8. Preventing conflicts of interest between the Board of Trustees and administrators and services organizations.
9. Establishing standards for disciplinary action.

Type and number of entities affected: The regulation applies to liability self-insurance groups established or groups which have expanded the kinds of risks protected pursuant to KRS 304.1-120 on or after July 15, 1986. Thus, the regulation does not apply to groups established under the prior version of KRS 304.1-120 unless they expand the types of risks they protect. The Department of Insurance has heard from two or three associations considering establishing liability self-insurance groups.

1. Direct or indirect cost or savings to those affected: The regulation does not impose significant costs on liability self-insurance groups. The expenses imposed by the regulation

are for things which must be done by any well run liability self-insurance group - hiring independent certified public accountants, hiring qualified actuaries, purchasing excess insurance, etc.

2. Reporting and paperwork requirements: KRS 304.1-120 requires the commissioner to establish the form of the liability self-insurance group's filing with the department. Section 4 of the proposed regulation lists the information which must be filed.

Effects on the Promulgating Administrative Body: The department will incur some expense in reviewing and maintaining the filings required by the regulation. However, it appears that these expenses will be minor.

Assessment of Anticipated Effect on State and Local Revenues: The proposed regulation has no effect on state and local revenues. However, SB 249 may have a significant effect on state and local revenues. Liability self-insurance groups will be exempt from the 2% state premium tax (KRS 136.340 and 136.350), the 1.5% property and casualty insurance surcharge (KRS 136.392), the 3% surplus lines tax (KRS 304.10-180), and Kentucky municipal premium taxes (KRS 91A.080; varies from 2% to 14%, plus collection fee). If a significant number of risks are assumed by liability self-insurance groups, this revenue will be lost to state and local governments.

Assessment of Alternative Methods; Reasons Why Alternatives Were Rejected: No alternatives were considered in that liability self-insurance groups tend to engage in so-called "cash flow underwriting" under which all is considered well as long as there are sufficient funds coming in to cover known claims and expenses. Such an approach ignores incurred but not reported claims and expenses and leads to unfunded liabilities, to the detriment of all Kentuckians.

Statutes, Rules, Regulations, or Governmental Policies Which May Conflict, Overlap, or Duplicate the Proposed Regulation: It may be argued by some that the Department of Insurance has no authority to promulgate this regulation because KRS 304.1-120 exempts liability self-insurance groups from the Insurance Code. However, the persons making these arguments have ignored the language of the Insurance Code and the legislative history of SB 249.

Under KRS 304.1-120, liability self-insurance groups are exempt from the Insurance Code only if they meet certain conditions. The Commissioner of Insurance is responsible for enforcing the Kentucky Insurance Code, including KRS 304.1-120, KRS 304.2-100. Therefore, the Commissioner of Insurance has the authority to establish what constitutes compliance with KRS 304.1-120.

When SB 249 was considered by the 1986 Kentucky General Assembly, legislators asked the sponsoring legislators who would assure that liability self-insurance groups were run in a safe manner. The legislative sponsors replied that the commissioner would "see that everything was all right." This remark indicates that the commissioner has authority to promulgate the proposed regulation.

Tiering: Tiering was difficult because SB 249 provides broad authority for any group of for-profit Kentucky corporations or any "bona fide association" to form a liability self-insurance group for "professional or public liability." Liability to anyone for anything constitutes "public liability."

However, teiring was used in the area of proof of financial responsibility in that this requirement may be satisfied by either a surety bond or security endorsement to an excess insurance policy. Further, the amounts of the surety bond or security endorsement to an excess insurance policy are left open and will be set based on the risks involved.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.

RELATES TO: KRS 304.12-020, 304.20-300 to 304.20-350

PURSUANT TO: KRS Chapter 13A, 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation provides certain guidelines for the declination, cancellation, and nonrenewal of property and casualty insurance pursuant to KRS 304.20-300 to 304.20-350.

Section 1. Definitions. The definitions of KRS 304.20-300 and 304.20-310 apply to this regulation.

Section 2. Application of KRS 304.20-300 to 304.20-350 to Property and Casualty Insurance Policies. (1) KRS 304.20-300 to 304.20-350 apply to declinations, cancellations, and nonrenewals of property and casualty insurance policies described in KRS 304.20-300 delivered, issued for delivery, or renewed after July 15, 1986.

(2) KRS 304.20-300 to 304.20-350 apply to every declination which occurs after July 15, 1986.

(3) KRS 304.20-300 to 304.20-350 apply to the cancellation and nonrenewal of all property and casualty insurance policies delivered or issued for delivery after July 15, 1986.

(4) KRS 304.20-300 to 304.20-350 apply to the cancellation and nonrenewal of property and casualty insurance policies in existence on July 15, 1986, only after such policies have been renewed after July 15, 1986.

Section 3. Notice of Nonrenewal. (1) Every notice of nonrenewal pursuant to KRS 304.20-320 shall contain the following statement, or a statement substantially similar to the following statement:

> Kentucky law provides that you may submit a written request to the insurer for an explanation of the reason for the nonrenewal of your policy. The insurer must respond within 15 working days of the receipt of your request. Submit your written request to: (name and address of person whom request should be directed).

(2) The statement required by subsection (1) of this section shall be printed in a manner reasonably calculated to inform the insured of

the right to request in writing the reason for the nonrenewal.

(3) Written requests for explanations of the reasons for nonrenewals shall be answered by insurers within fifteen (15) working days of receipt of such requests.

Section 4. Effective Date. (1) This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

(2) As a courtesy to the Legislative Research Commission, the Department of Insurance states that this regulation is intended to be permanent. This does not constitute an admission of the constitutionality of 1986 Ky. Acts c. 499 Sections 8 and 9.

GIL McCARTY, Commissioner
ROBERT M. DAVIS, Secretary
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 3 p.m.

PUBLIC HEARING SCHEDULED: Persons with an interest in the subject matter of the proposed regulation may submit written comments to Gil McCarty, Commissioner, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602. Such persons may appear at a public hearing scheduled for August 21, 1986, at 1:30 p.m. (ET) in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is necessary to clarify two aspects of KRS 304.20-300 to 304.20-350: the application of these statutes to contracts in existence on the effective date of the statutes and to effectuate the rights of insureds to find out the reasons for nonrenewals of property and casualty insurance. In most instances, the application of statutory provisions to insurance contracts that are in existence at the time the statues become effective is an unconstitutional impairment of the obligations of a contract. Thus, the cancellation and nonrenewal provisions of KRS 304.20-300 to 304.20-350 cannot be applied to contracts until after they have been renewed following July 15, 1986. Upon such renewals, these contracts become new contracts subject to applicable laws.

The proposed regulation also requires that a notice of nonrenewal state that the insured has the right to submit a written request to the insurer to learn the reason for the nonrenewal. This right is provided for in KRS 304.20-320, but there is nothing to guarantee that the insured is aware of this right. The proposed regulation effectuates the statutory provision by assuring that the insured is aware of this right and by requireing the insurer to make a timely response.

Type and Number of Entities Affected: The regulation applies to the approximately 600 insurers transacting property and casualty insurance in Kentucky and will affect purchasers of property and casualty insurance throughout Kentucky.

1. Direct or indirect cost or savings to those affected: The portions of the proposed regulation defining the effect of KRS 304.20-300 to 304.20-350 will result in savings by clarifying the application of the law. The provisions requireing notice of the right to request the reason for a nonrenewal will result in some expense for the creation of new notice forms.

2. Reporting and paperwork requiements: Notice of the right to submit a written request to obtain the reason for nonrenewal must be included in all notices of nonrenewal.

Effects on the Promulgating Administrative Body: None.

Assessment of Anticipated Effect on State and Local Revenues: None.

Assessment of Alternative Methods; Reasons Why Alternatives Were Rejected: The Department has received numerous inquiries concerning the application of KRS 304.20-300. The Department has also received inquiries concerning how insureds will know of their right to request an explanation of a nonrenewal. In light of these inquiries, the clarification and the notice requirements of the proposed regulation are desirable.

Statutes, Rules, Regulations, or Governmental Policies Which May Conflict, Overlap, or Duplicate the Proposed Regulation: None.

Tiering: Tiering has been applied in the recognition of the application of KRS 304.20-300 to 304.20-350 to declinations, to cancellation and nonrenewal of policies delivered or issued for delivery after July 15, 1986, and to insurance contracts in existence on July 15, 1986. Tiering was not applied to the provisions of the proposed regulation relating to notice of the right to request such an explanation is very broad.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Banking

808 KAR 1:100. Information to be furnished and maintained by banks.

RELATES TO: KRS 287.065(3)
PURSUANT TO: KRS 287.020, 288.065
NECESSITY AND FUNCTION: KRS 287.065 requires the commissioner to prescribe by regulation what banks are required to furnish their directors regarding Kentucky banking law and the duties of a bank director, and what federal banking law volumes are required to be maintained at the bank.

Section 1. The bank shall furnish each director, within forty-five (45) days of his election to the board, with an updated copy of the Kentucky banking law, KRS Chapter 287. This requirement may be satisfied by the Kentucky Banking Laws Annotated, published by Banks-Baldwin Law Publishing Company, 1904 Ansel Road, University Circle, Cleveland, OH, 44106.

Section 2. The bank, if it is a non-member bank, shall maintain at least one (1) updated copy of the Federal Deposit Insurance Corporation Law, Regulations, and Related Acts, obtainable from the Corporate Communications Office, FDIC, 550 17th Street, N.W., Washington, D.C., 20429. If the bank is a Federal Reserve

member bank, it shall maintain at least one (1) updated copy of the Federal Reserve Regulatory Service, obtainable from the Publications Services Section, Federal Reserve Board, 20th Street and Connecticut Avenue, N.W., Washington, D.C., 20551.

Section 3. The bank shall furnish each director, within forty-five (45) days of his election to the board, with a copy of an appropriate publication outlining the duties of a bank director. This requirement may be satisfied by The Focus On The Bank Director, published by the American Bankers Association, 1120 Connecticut Avenue, N.W., Washington, D.C., 20036.

Section 4. The requirements contained in Sections 1, 2 and 3 of this regulation may be satisfied by other publications, with the prior written approval of the Commissioner of the Department of Financial Institutions.

ROBERT M. DAVIS, Secretary
THOMAS B. MILLER, Commissioner
APPROVED BY AGENCY: June 13, 1986
FILED WITH LRC: July 9, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 22, 1986, at 10 a.m., prevailing local time, in the offices of the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing no later than August 17, 1986: J. Rick Jones, Esq., Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James M. Baker
(1) Type and number of entities affected: Approximately 290 state-chartered banks.
(a) Direct and indirect costs or savings to those affected:
1. First year: Approximately $200.
2. Continuing costs or savings: Unknown; depends on how often new bank directors are elected.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect on competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative, required by statute.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
Tiering:
Was tiering applied? No. Law applies to all banks equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions

808 KAR 12:010. Corporate surety bond amounts.

RELATES TO: KRS 294.032, 294.060
PURSUANT TO: KRS 294.060
NECESSITY AND FUNCTION: KRS 294.060 requires the commissioner to determine the amount of corporate surety bonds which mortgage loan companies and mortgage loan brokers must post in order to be licensed under KRS Chapter 294.

Section 1. In order to be licensed under KRS Chapter 294, a mortgage loan company shall post either a corporate surety bond or an alternative instrument authorized by KRS 294.060(2) in the amount of $25,000.

Section 2. In order to be licensed under KRS Chapter 294, a mortgage loan broker shall post either a corporate surety bond or an alternative instrument authorized by KRS 294.060(2) in the amount of $5,000.

ROBERT M. DAVIS, Secretary
THOMAS B. MILLER, Commissioner
APPROVED BY AGENCY: June 13, 1986
FILED WITH LRC: July 9, 1986 at 10 a.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on August 22, 1986, at 10 a.m., prevailing local time, in the offices of the Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing no later than August 17, 1986: Jan R. Smith, Esq., Department of Financial Institutions, 911 Leawood Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jan R. Smith
(1) Type and number of entities affected: Mortgage Loan Companies and Mortgage Loan Brokers (approximately 40 different companies).
(a) Direct and indirect costs or savings to those affected: No change in cost for mortgage loan companies, but mortgage loan brokers will save difference in cost of obtaining a $5,000 surety bond rather than a $25,000 bond.
1. First year: Same as above.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A
(b) Reporting and paperwork requirements: Must submit proof of surety bond or an alternative instrument when applying for a license with Department of Financial Institution.
(2) Effects on the promulgating administrative body: Mortgage loan companies and mortgage loan brokers must submit proof of satisfying surety bond requirement before department can issue a license.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Must maintain records of whether licensed entities continue to satisfy surety bond requirement.
(3) Assessment of anticipated effect on state and local revenues: Perhaps state revenues will increase because more mortgage loan brokers will be able to meet licensing requirements.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Office of Policy and Budget

900 KAR 1:060. Protection of human subjects.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 194.050
NECESSITY AND FUNCTION: The cabinet is required, by 45 CFR 46.101 through 46.409, to have an Institutional Review Board for the Protection of Human Subjects (IRB) to protect the rights and welfare of human subjects of research conducted or sponsored by the cabinet. KRS 194.050 authorizes the Secretary for Human Resources to adopt such regulations as are necessary to qualify for the receipt of federal funds. This regulation adopts, by reference, applicable federal regulations and publications which set forth the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation, ethical principles and guidelines, a listing of research activities which may be reviewed through expedited review procedures and other relevant matters.

Section 1. Definitions. As used in this regulation the following terms shall have the meanings set forth below:
(1) "Board" means the cabinet's Institutional Review Board established by this regulation and attached to the Office of Policy and Budget.
(2) "Health risk project" means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of human research subjects.
(3) "Research" shall have the meaning set forth in 45 CFR 46.102(e) and in addition shall include descriptive and exploratory research activities, that lay the ground work for contributions to knowledge.
(4) Research shall be considered "sponsored" by the Cabinet for Human Resources if it is supported financially by the cabinet, if it uses staff or facilities provided by the cabinet, or if it is sponsored or endorsed by cabinet policy makers.
(5) "Auxiliary review board" means an independently functioning local IRB within the Cabinet for Human Resources established to serve a particular facility or institution.

Section 2. Incorporation by Reference. The cabinet hereby incorporates by reference 45 CFR 46.101 through 45 CFR 46.409, revised as of 3/8/83, pertaining to the Protection of Human Subjects. The decisions of the board concerning the protection of human subjects shall be guided by the "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research," published 4/18/79. The federal regulations incorporated by reference and the Belmont Report are available upon request from the Office of Policy and Budget, Kentucky Cabinet for Human Resources and as a two (2) volume appendix (DHEW Publication No.(OS) 78-0013 and No.(OS) 78-0014) from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 3. Institutional Review Board. (1) An Institutional Review Board (IRB) for the Protection of Human Subjects within the Cabinet for Human Resources (CHR) is hereby created. The board shall be attached to the Office of Policy and Budget (OPB).
(2) The IRB shall consist of not less than five (5) nor more than eleven (11) members appointed by the secretary. Members representing various professional and academic fields shall be nominated by department commissioners or by office heads and appointed by the secretary. The board shall meet as needed to review projects. The board shall include a chairman appointed by the secretary of the cabinet.
(3) The Executive Director of the Office of Policy and Budget shall provide the necessary staff and administrative support and shall serve as liaison between the board and the U.S. Department of Health and Human Services. Staff appointed by the Executive Director of the Office of Policy and Budget shall ensure the maintenance of appropriate records; conduct a preliminary review of submitted projects on a timely basis; refer all projects, to which the regulations are appicable, to the board; and make recommendations to the board on the disposition of the applicable projects.

Section 4. Project Submission. (1) It shall be the responsibility of the appropriate division director, commissioner, or office head to direct the project administrators under their jurisdiction to submit research projects, involving human subjects, to OPB for possible consideration by the board. Project submission shall include three (3) copies each where applicable, of: a request for approval form, a narrative description of the project's purpose and proposed research procedures, the research instrument(s) to be used, a narrative description of how subject confidentiality will be addressed, and the consent form.
(2) No modification in the research protocol or design of an approved research project, that could increase the level of risk to the subjects shall be implemented unless first approved by the board. In the event that such alterations are necessary, it shall be the responsibility of the research administrator to obtain the prior approval of the board. Failure to obtain such approval may result in the suspension or termination of the initial board approval and

the requirement that all research activity be stopped.

Section 5. Scope of Board Approval. (1) Board approval of a project represents only a judgment that human subjects have been adequately protected and shall not in any way represent a judgment concerning its ultimate research value or a policy decision regarding the value of the research to the Cabinet for Human Resources.

(2) The board shall have the ultimate responsibility of reviewing all research projects involving human subjects, when the research is sponsored by the Cabinet for Human Resources and when it is not specifically exempted from board review. Where the primary review is performed by an approved auxiliary review board, the board may limit its review to the findings and recommendations of the auxiliary review board or the board may choose to conduct its own review of the project.

(3) A research administrator may request a reconsideration of an adverse decision by the board by submitting a written request for reconsideration to the Executive Director of the Office of Policy and Budget. Such a request must be made within thirty (30) days of the principal investigator's notification of adverse decision. Upon receipt, the request for reconsideration and any related documents shall be conveyed to the board chairman for reconsideration. Such a reconsideration shall be made in the same manner as the initial review.

Section 6. Board Responsibilities. (1) The board chairman shall, in coordination with the Office of Policy and Budget, call such meetings as needed to conduct board business on a timely basis.

(2) Reviews and recommendations concerning projects shall be consistent with the criteria in the federal regulations incorporated by reference using guidelines and forms adopted by the board.

Section 7. Responsibilties of Principal Investigators. (1) If any changes are made in research design or protocol that in any way affect the level of risk to subjects, confidentiality procedures, or consent procedures, such changes shall be submitted, before implementation, to the board for approval.

(2) If a project is defined as a "health risk project" by the board, the principal investigator shall report to the board all research subject deaths, which become known to him or her, whether the death appears likely to be related to participation in the research project. Reports of such deaths shall be made to the board in writing within seven (7) days of the principal investigator's knowledge of the death.

Section 8. Auxiliary Review Boards. The chief executive of CHR institutions or facilities conducting research, subject to the federal regulations pertaining to human subjects, may form auxiliary review boards to conduct the required review of such projects. The establishment of auxiliary review boards shall be approved by the Secretary of the Cabinet for Human Resources. Auxiliary review boards, as institutional review boards, shall conduct reviews consistent with these administrative regulations. The findings and recommendations of the auxiliary review board on all research studies involving risk to human subjects shall be forwarded, at least five (5) working days before initiation of the research, to the Office of Policy and Budget for review by the board. The board shall respond to the auxiliary review board, within twenty-one (21) days of the board's receipt of the auxiliary review board's finding and recommendations.

Section 9. Confidentiality. Except as otherwise provided by law or by regulation of the cabinet, research information that identifies individual subjects shall be regarded as confidential and shall not be disclosed to persons outside the research project staff without the subject's prior written authorization. Nothing contained herein shall be deemed to prevent the release of raw or summary data, that does not identify subjects.

JOHN CUBINE, Executive Director
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 11, 1986
FILED WITH LRC: July 14, 1986 at 3 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jules Delambre
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Minimum direct costs (board members are all state employees, all but one work in Frankfort, travel costs for one member to travel from Lexington).
2. Continuing costs or savings: Costs will include the copying of handout materials and postage to Lexington.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: 45 CFR 46.115 requires the cabinet to prepare and maintain adequate documentation of IRB activities.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $127,145 in federal grant revenue receipt contingent on IRB revenue, additional dependency on other research proposals funded. (Revenue depends on board's operation.)
2. Continuing costs or savings: Depends on other research proposals funded.
3. Additional factors increasing or decreasing costs: The more projects the greater the federal revenues resulting from board operation.
(b) Reporting and paperwork requirements: Federal research proposals require completion of HHS 296 (Rev. 1/82) requiring certification of board review.
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: A decision to not promulgate this regulation would result in ineligibility for federal funds.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Board review of research projects assures the cabinet that every reasonable effort has been made to protect the rights and health of the research subjects. Such efforts should prevent research which creates unacceptable risks for research subjects which could result from cabinet money being spent for research which put human subjects at such risk. In addition, any anticipated research will be afforded a thorough review and assessment.

Tiering:
Was tiering applied? No. Not applicable.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:220. Dual licensure of hospitals.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
PURSUANT TO: KRS 216B.040, 216B.105, 216B.107, Executive Order 86-366
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. KRS 216B.107 authorizes the dual licensure of acute care hospitals. This regulation provides for the minimum licensure requirements for the operation of licensed acute care hospitals which provide, as an identifiable part thereof, acute, skilled nursing and intermediate care services.

Section 1. Scope of Operations and Services. Hospitals which are issued a dual license in accordance with KRS 216B.107 shall designate a specific number of beds, as an identifiable part, for acute, skilled nursing and/or intermediate care. The identifiable part of a hospital, licensed as dual, shall provide appropriate facilities and services capable of maintaining a combined resident-mix of acute and long-term care patients.

Section 2. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.
(2) "Unit" means a dual licensure unit.
(3) "Identifiable part" means an entire physically distinct unit consisting of all beds within that unit (such as a separate building, floor, wing or corridor).
(4) "Medical staff" means an organized body of physicians, and dentists where applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.
(5) "Occupational therapist" means a person who is licensed pursuant to KRS Chapter 319A.
(6) "Speech pathologist" means a person who is licensed pursuant to KRS Chapter 334A.
(7) "Qualified dietician" or "nutritionist" means:
(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or
(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or
(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.
(8) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Record Association.
(9) "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.
(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.
(11) "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.

Section 3. Applicability. (1) General acute care hospitals which have a dual licensure unit shall designate on their application for licensure the location and number of beds to be licensed as dual licensure beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this regulation and shall be subject to approval by the Cabinet for Human Resources.
(2) Licensee. The hospital shall be legally responsible for the operation of dual licensed beds and for compliance with applicable federal, state and local laws and regulations.

Section 4. Administration and Operation. (1) General requirements.
(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.
(b) The hospital shall comply with the requirements of Kentucky's Nursing Home Reform Law pursuant to KRS 216.535 to KRS 216.593 and 900 KAR Chapter 2.
(2) Administrator. The unit within the hospital designated for dual licensure shall have a full-time administrator who is licensed as a nursing home administrator pursuant to KRS Chapter 216A. The administrator shall be responsible for the operation of all dual licensure beds and shall delegate such responsibilities in his/her absence. The administrator of the unit may be the hospital

administrator, his/her assistant, or designee.

(3) Administrative records and reports. In addition to the requirements of 902 KAR 20:016, Section 3(3) the following records/reports are required:

(a) The hospital shall maintain a permanent, chronological patient registry, for the dual licensure unit, documenting the following:

1. Date of admission;
2. Name of patient;
3. Attempts to place the patient in any intermediate care facility or skilled nursing facility within the county of residence of the patient or of the hospital or the patient has been refused admission to such facility;
4. Date of transfers within the facility or across levels of care; and
5. Date of final discharge.

(b) The hospital shall require and maintain written recommendations or comments from consultants regarding the unit and its development on a per visit basis.

(c) Unit menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The hospital requesting dual licensure beds shall meet the requirements of 902 KAR 20:016, Section 3(4) and the additional requirements contained in this section.

(a) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(b) Long term care patient care policies. The unit shall have written policies to govern the skilled nursing and intermediate care patients and related medical and other services provided, which shall be developed by the medical staff. Pharmacy policies and procedures shall be developed by the medical staff. The medical staff shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the unit shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted to the unit;
2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review;
6. Use of restraints;
7. Coordination between nursing staff, medical staff, and business office concerning level of care changes; and
8. Update procedures for reimbursement.

(c) Adult and child protection. The unit shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(d) Missing patient procedures. The unit shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission. The hospital requesting dual licensure beds shall meet the requirements established in 902 KAR 20:016, Section 3(4)(b) and the additional requirements contained in this section.

(a) Patients shall be admitted to dual licensed beds only upon the referral of a physician. The unit shall not admit persons whose care needs exceed its capabilities.

(b) Upon admission the unit shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The unit shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or long term care facility (A current hospital discharge summary containing the above information shall be acceptable.)

(c) If physician's orders for the immediate care of a patient are unobtainable at the time of admission, the unit shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the hospital to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(7) Discharge planning. The hospital shall coordinate its discharge planning program, with the dual licensure unit, to assure continuity of care for patients being transferred to another health care facility, across levels of care, or being discharged to the home.

(8) Transfer procedures and agreements. The hospital requesting dual licensure beds shall meet the requirements of 902 KAR 20:016, Section 3(7) and the additional requirements contained in this section.

(a) The unit shall have written transfer procedures and agreements for the transfer of patients to other health care facilities. Any unit which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer or a patient and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the unit, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When changes and progress occur which

would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(9) Tuberculosis testing.

(a) All hospital personnel shall comply with the tuberculosis testing procedure outlined in 902 KAR 20:016, Section 3(9)(c)1-6.

(b) All hospital patients initially transferred to the dual licensure unit, for the purpose of obtaining acute care, skilled nursing or intermediate care, shall be tested and monitored for tuberculosis in accordance with 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel. The hospital requesting dual licensure beds shall meet the personnel requirements of 902 KAR 20:016, Section 3(9)(a)-(d) and the additional requirements contained in this section.

(a) Health requirements: No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(b) Staffing classification requirements:

1. The unit shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number classification and assignment between the facility and the unit of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The unit shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the unit. If the director of nursing has administrative responsibility for the unit, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing unit shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the medical staff;

f. Coordinating nursing services with other patient care services;

g. Planning and assuring that orientation programs for new nursing personnel and continuing in-service education for all nursing personnel are conducted;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his/her plan shall be reviewed and modified as necessary.

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing.

5. Charge nurse. There shall be at least one (1) registered nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty.

6. Pharmacist. Pharmaceutical services shall be provided to the unit on a full-time, part-time or consultant basis.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a unit with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, person with qualifications other than those described in Section 4(10)(b)7a of this

regulation may be assigned duties appropriate to their training and experience.

8. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by, and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the unit, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the unit does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(c) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for non-professional nursing personnel shall begin during the orientation period, to include demonstration, practice, and supervision of simple nursing procedures applicable in the individual unit. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one from outside the unit, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(11) Medical records. The hospital requesting dual licensure beds shall meet the medical records requirements of 902 KAR 20:016, Section 3(11), and the additional requirements contained in this subsection.

(a) Name and telephone number of patients' personal physician.

(b) Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

(c) Nursing supervisors written assessment of the patient's monthly general condition.

(d) Changes in patient's response to the activity and therapeutic recreation program.

Section 5. Provision of Services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4 and the additional requirements contained in this section.

(1) Medical staff/physician services. The hospital requesting dual licensure beds shall meet the medical staff requirements of 902 KAR 20:016, Section 4(1) and the additional requirements contained in this subsection.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients requiring skilled nursing care shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) Patients requiring intermediate nursing care shall be evaluated by a physician as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical record.

(2) Nursing services. The hospital requesting dual licensure beds shall meet the nursing service requirements of 902 KAR 20:016(2) and the additional requirements contained in this subsection.

(a) Patient care plan. A written patient care plan shall be developed and maintained for each patient by the nursing staff in coordination with the attending physician.

1. Plan indicates the type of care to be provided, goals to be accomplished and who is responsible for each element of care.

2. Patient care plan is reviewed and updated as necessary by all professional personnel.

(b) Administration of medications including oral, rectal, hypodermic, and intramuscular.

(c) Written monthly assessment of the patient's general condition by licensed nursing personnel.

(d) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets.

(e) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(f) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move

himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(g) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(h) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative nursing measure shall be taught to all nursing personnel and practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measure shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as, and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

6. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary; and

7. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his/her evaluation of patients by applying muscle, nerve, joint, and functional ability tests; and/or

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders; and/or

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests; and/or

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the unit such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services.

(a) All dual licensure units shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the unit shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with toothbrushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(5) Dental services. The unit shall assist patients to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(6) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility

shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(7) Patient activities and therapeutic recreation.

(a) All dual licensure units shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of systems of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possible, the patient shall be included in the planning of activities.

(b) All dual licensure units shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the unit, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. The unit shall provide supplies and equipment for the activities program.

7. Reading materials, radios, games and TV sets shall be provided for the patients.

8. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area for private consultation shall be made available.

9. The unit shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety;

(8) Transportation:

(a) If transportation of patients is provided by the unit to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The unit shall arrange for appropriate transportation in case of medical emergencies.

(9) Pharmaceutical services. The hospital requesting dual licensure beds shall meet the pharmaceutical requirements outlined in 902 KAR 20:016, Section 4(5) and the additional requirements contained in this subsection.

(a) Medication services. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaluation pursuant to Section 5(1)(b)-(c) of this regulation. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

(b) Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314). Each dose administered shall be recorded in the medical record.

1. The nursing station shall have readily available items necessary for the proper administration of medications.

2. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

3. Medications prescribed for one (1) patient shall not be administered to any other patient.

4. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

5. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the

patient's medical record as well as on an incident report.

6. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff, (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

(c) Labeling and storing medications.

1. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

2. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

3. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

4. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

5. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

(10) Dietary services. The hospital requesting dual licensure beds shall meet the dietary services requirements outlined in 902 KAR 20:016, Section 4(3) and the additional requirements contained in this subsection.

(a) Nutritional needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex, and activity, and in accordance with physician's orders.

(b) Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

1. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

2. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

Section 6. Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity: four (4) patients;

(b) Patient rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall. Not less than a four (4) foot space shall be provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms.

(2) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the licensure agency. Al least two (2) rooms per nursing unit shall be designed for single person occupancy (one (1) bed) and shall have private toilet rooms with bath. At least sixty (60) percent of the beds shall be located in rooms designed for one (1) or two (2) beds.

(3) Patient's dining, TV viewing and recreation areas:

(a) The total areas set aside for these purposes shall be adequate to meet the needs of the facility's dual licensure program.

(b) Storage shall be provided for recreational equipment and supplies (e.g., wall cabinets and closets).

WILLIAM M. GARDNER, Inspector General
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 14, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986 at 9 a.m., in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller

(1) Type and number of entities affected: Hospitals implementing dual licensure programs.

(a) Direct and indirect costs or savings to those affected: (Minimal)

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Hospitals implementing dual licensure programs would need to meet criteria established to insure proper care for long term care patients.

(2) Effects on the promulgating administrative body: The Cabinet for Human Resources would bear some of the costs through the Medicaid and Medicare programs.

(a) Direct and indirect costs or savings: (See above)

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: (Minimal increase)

(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: This program and standards to regulate this program are mandated by KRS.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:

Tiering:
Was tiering applied? No. These are licensure standards. All services are required to meet the same standards.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate): The proposed regulation would license hospitals to provide long term care services in an identifiable physical part of the facility. The program would be a "pilot" effort; therefore, specific federal regulations do not exist.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail): "Distinct part" units as required by the Medicare program mandate separate cost accounting, separate admission/discharge procedures, etc. The proposed dual licensure program is less stringent.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: N/A (See above).

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance

903 KAR 5:300. Required reports and due dates.

RELATES TO: KRS 341.190, 341.262
PURSUANT TO: KRS 13A.100, 194.050, 341.115
NECESSITY AND FUNCTION: KRS 341.190 authorizes the Secretary for Human Resources to require the furnishing of certain information and records by employing units concerning wages paid, employment and other related matters. KRS 341.262 provides that a penalty will be accessed for failure to submit such reports when due. This regulation delineates the reports with attendant due dates.

Section 1. Required reports include: Employer's Quarterly Unemployment Wage and Tax Report, U.I.-3.

Section 2. The due dates for the filing of the U.I.-3 report is the last day of the month following the close of the calendar quarter in which wages are paid.

Section 3. Reports which are deposited in the mail shall be considered filed as of the date indicated by the postmark thereon.

Section 4. For the purpose of this regulation, when the due date falls on a day during which offices of the Division of Unemployment Insurance are closed, the next day thereafter on which such offices are open shall be considered the due date.

JAMES P. DANIELS, Commissioner
E. AUSTIN, JR., Secretary
APPROVED BY AGENCY: July 2, 1986
FILED WITH LRC: July 14, 1986 at 4 p.m.
PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for August 21, 1986, at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1986, of their desire to appear and testify at the hearing: Ryan Halloran, Acting General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James P. Daniels
(1) Type and number of entities affected: 68,000 employers subject to the UI Program.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None

Tiering:
Was tiering applied? No. All employers treated equally.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the July 1-2, 1986 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 1, 1986 at 2 p.m. and on Wednesday, July 2, 1986 10 a.m. in Room 104. Representative Bill Brinkley, Chairman, called the meeting to order, and the secretary called the roll. On motion of Senator McCuiston, seconded by Representative Bruce, the minutes of the June 9-10, 1986 meeting were approved.

Present were:

Members: Representative Bill Brinkley, Chairman; Senators Harold Haering and Pat McCuiston; Representatives Jim Bruce, Ed Holloway, and Joe Meyer.

Guests: Representative Woody Allen; Roger Green, Department of Military Affairs; Bill Graves, John Phillips, Department of Fish & Wildlife Resources; Michael Bradley, Corrections Cabinet; Gary Bale, Jim Batts, Joanne Brooky, Wendell D. Bruce, Ken Draut, Margaret A. Hazlette, Terrance Hibpshman, Clarence E. Salyer, Sidney Simandle, Scott Trimble, Jim Tyrrell, Thomas J. Vest, James A. White, Angela Wilkins, Kathy Williams, Akeel Zaheer, Department of Education; Gail Mayeux, Sandra G. Pullen, Jerry Ross, Transportation Cabinet; Ellyn Elise Crutcher, Barbara H. Jones, Public Service Commission; Carl VanCleve, Department of Housing, Buildings and Construction; Betty Beshoar, Roy Butler, Barbara Coleman, Eva Ellis, Ked Fitzpatrick, Eric Friedlander, Vic Gausepohl, Anne Hager, Clifton Howard, Delano Miller, Larry W. Moore, Ishmael Preston, Mike Robinson, Leon Townsend, R. Hughes Walker, Mark Yancey, Cabinet for Human Resources; Richard Belding, Department for Libraries & Archives; Ted Bradshaw, KY Bankers Association; Marie Alagia Cull, KY Association of Health Care Facilities; D. Ray Gillespie, Cardinal Industries - KY Hotel-Motel Association; Daniel T. Yates

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Valencia, Chris Lilly, and Carla Arnold.

The Administrative Regulation Review Subcommittee met on July 1 and 2, 1986, and submits the following report:

The Subcommittee determined that the following regulations, amended as agreed by the subcommittee and promulgating body, complied with KRS Chapter 13A:

Department of Military Affairs: National Guard

106 KAR 1:050 (Educational encouragement fund.) This administrative regulations was amended to include schools inadvertently omitted.

Education and Humanities Cabinet: Department of Education: Office of Vocational Rehabilitation Services: Administration

706 KAR 1:020 (Independent living plan.) This regulation was technically amended to change the date in the material incorporated by reference.

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:068 (Purchased water adjustment for water districts and water associations.) In order to comply with House Bill 810, enacted during the 1986 Regular Session, Section 5 of this administrative regulation was amended to read: "Notice to Customers. The water district shall notify its customers of any increase in rates resulting from a supplier increase no later than the rendering of the first bill at the increased rate.

Department of Housing, Buildings, and Construction: Plumbing

815 KAR 20:001 (Sections declared independent.) This administrative regulation was amended to comply with KRS 446.090, relating to severability. (1) The following was added under the "Necessity and Function" section: "As KRS 446.090 provides for severability of statutes, so does this regulation provide for the severability of plumbing code provisions. (2) The second paragraph of the "Necessity and Function" section was deleted and the following was inserted in lieu thereof: "If any part of this Code shall be held unconstitutional, the remaining parts shall remain in force, unless the remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that the general assembly or the department would not have enacted the remaining parts without the unconstitutional part, or unless the remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the intent of the general assembly.

The following proposed regulation was withdrawn by the promulgating agency on July 2, 1986, and the Subcommittee recommended the following:

Cabinet for Human Resources: Department for Health Services: Certificate of Need and Licensure

902 KAR 20:210 (General health services licensure.) This administrative regulation had been deferred at the June 10, 1986 meeting of the Subcommittee so that Subcommittee and Health and Welfare staff could attempt to revise the regulation to meet the objections of the Subcommittee. At the June, 1986 meeting, the Subcommittee had determined that the alternative procedures provided for by this regulation violated KRS Chapter 13A in that they permitted the amendment or promulgation of administrative regulations without compliance with the procedure established by KRS Chapter 13A; they failed to provide notice to the regulated health services of the license requirements; and they lacked authority to waive requirements in existing regulations. The Subcommittee felt that a general regulation governing health services for which there was no established category, as found in Section 5 of the proposed regulation,

might not be adequate to cover the specific licensure requirements for the variety of health services affected.

Agency personnel and Marie Alagia, who represented the Nursing Home Association, discussed the problems faced in the procedure mandated by statute.

Chairman Brinkley acknowledged the problem faced by the agency because the statutes divided jurisdiction over these procedures between two administrative bodies and provided for separate procedures that resulted in the granting of a certificate of need before licensure.

The Subcommittee approved a motion to transmit this regulation to the Interim Joint Committee on Health and Welfare for study and recommendations for legislation. The agency withdrew the regulation. The Subcommittee offered the assistance of its staff to the agency to develop an administrative regulation for the period before the next Regular Session.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Tourism Cabinet: Department of Fish and Wildlife Resources: Game
301 KAR 2:111 (Deer and turkey hunting on special areas.)

Corrections Cabinet: Office of the Secretary
501 KAR 6:020 (Corrections policies and procedures.)
501 KAR 6:030 (Kentucky State Reformatory.)
501 KAR 6:040 (Kentucky State Penitentiary.)
501 KAR 6:050 (Luther Luckett Correctional Complex.)
501 KAR 6:060 (Northpoint Training Center.)
501 KAR 6:080 (Corrections Cabinet manuals.)
501 KAR 6:090 (Frankfort Career Development Center.)

Transportation Cabinet: Mass Transportation
603 KAR 7:020 (Nonurbanized Public Transportation Program.)

Education and Humanities Cabinet: Department of Education: Office of Local Services: Pupil Transportation
702 KAR 5:020 (Program cost calculation.)
702 KAR 5:080 (Bus drivers' qualifications; responsibilities.)
702 KAR 5:110 (Vocational pupils, reimbursement for.)
School Terms, Attendance and Operation
702 KAR 7:020 (Calendar.)
Office of Instruction: Instructional Services
704 KAR 3:304 (Required program of studies.)
704 KAR 3:320 (Essential skills.)
704 KAR 3:335 (State plan for the administration of Chapter 2, ECIA of 1981.)
704 KAR 3:355 (Essential skills remediation.)
Student Services
704 KAR 7:020 (Counselor; criteria and duties.)
Elementary and Secondary Education Act
704 KAR 10:022 (Elementary, middle and secondary schools standards.)
Teacher Certification
704 KAR 20:005 (Kentucky standards for preparation program approval.)
704 KAR 20:045 (Teaching prerequisites for teacher certification; certificate application; beginning teacher internship program.) Representative Meyer questioned the decrease of number of years experience from five years to two years. The agency responded that this amendment was submitted to comply with statute revisions of the 1986 General Assembly. On motion to approve, the Subcommittee voted 3 yeas, 1 nay (Representative Meyer voted no).
704 KAR 20:095 (Elementary level on high school certification.)
704 KAR 20:135 (Kindergarten teachers.)
704 KAR 20:222 (Industrial education teachers.)
704 KAR 20:305 (Written examination prerequisites for teacher certification.)
704 KAR 20:310 (Written examination and internship prerequisites for vocational teachers.)
704 KAR 20:320 (Beginning teacher internship program.)
Office of Vocational Education: Administration
705 KAR 1:010 (Three year program plan.)
Fiscal Management
705 KAR 2:030 (Foundation program units.)
Office of Vocational Rehabilitation Services: Administration
706 KAR 1:010 (Three-year plan for vocational rehabilitation services.)
Office of Programs: Adult Education
709 KAR 1:080 (State plan for community education.)

School Facility Construction Commission: Commission Procedures
750 KAR 1:010 (Commission procedures.)

Public Protection and Regulation Cabinet: Public Service Commission: Utilities
807 KAR 5:067 (Purchased water adjustment for privately-owned utilities.)
Department of Housing, Buildings, and Construction: Plumbing
815 KAR 20:030 (License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.)

Cabinet for Human Resources: Department for Health Services: Hospitalization of mentally Ill and Mentally Retarded
902 KAR 12:080 (Policies and procedures for mental health/mental retardation facilities.)
Milk and Milk Products
902 KAR 50:030 (Standards for raw milk for manufacturing purposes.)
902 KAR 50:050 (Manufacturing plant requirements.)
902 KAR 50:110 (Grade A milk and milk products standards.)
Department for Employment Services: Unemployment Insurance
903 KAR 5:260 (Unemployment insurance procedures.) Senator McCuiston asked for an explanation of the matters affected by this regulation. Agency personnel stated that the regulation primarily updated administrative procedure, particularly with regard to the auditing of wage and tax returns. The most substantive change related to the validation of claims: wages earned in the base period and paid subsequently to that period would be rolled back or credited to the base period.
Department for Social Insurance: Medical Assistance
904 KAR 1:036 (Amounts payable for skilled nursing and intermediate care facility services.) Chairman Brinkley asked whether there was additional funding for the increase in

medical care for which the Kentucky Medical Assistance Program would pay. Agency personnel stated that indexing (factoring in the anticipated increase in inflation to the projected cost reports), was provided for at the 1986 Regular Session.

904 KAR 1:220 (Terms and conditions of provider participation; provider appeals.) Chairman Brinkley asked for an explanation of the procedure employed and the crime for which participation in the Kentucky Medical Assistance Program was precluded. Agency personnel stated that actions taken were based on cause and required conviction of a felony involving fraudulent practice in the Kentucky Medical Assistance Program. If a facility were unaware that an employe had been convicted of such a felony, the provider or facility would be provided with 60 day notice of the fact and given an opportunity to take corrective action.

Public Assistance

904 KAR 2:016 (Standards for need and amount; AFDC.)

904 KAR 2:020 (Child support.)

904 KAR 2:022 (Kentucky administrative process for child support.)

904 KAR 2:140 (Supplementary policies for programs administered by the Department for Social Insurance.)

904 KAR 2:150 (Incorporation by reference of materials relating to the Aid to Families with Dependent Children Program.)

904 KAR 2:170 (Incorporation by reference of materials relating to the Child Support Program.)

Food Stamp Program

904 KAR 3:020 (Eligibility requirements.)

904 KAR 3:090 (Incorporation by reference of materials relating to the Food Stamp Program.)

Department for Social Services: Child Welfare

905 KAR 1:180 (DSS policy and procedures manual.)

Department for Medicaid Services: Medicaid Services

907 KAR 1:004 (Resource and income standard of medically needy.)

907 KAR 1:028 (Other laboratory and x-ray services.)

907 KAR 1:250 (Incorporation by reference of materials relating to the Medical Assistance Program.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee deferred the following regulations at the request of the promulgating administrative body:

Education and Humanities Cabinet: Department of Education: Office of Instruction: Instructional Services

704 KAR 3:325 (Effective Instructional Leadership Act.)

Teacher Education

704 KAR 15:080 (Paraprofessional employees and volunteer personnel.)

Teacher Certification

704 KAR 20:330 (Endorsement for individual intellectual assessment.)

Other Business:

Libraries & Archives

Chairman Brinkley pointed out that implementation of the Local Records Grant Program without first having promulgated administrative regulations governing the program violated KRS Chapter 13A. The agency agreed to submit proposed administrative regulations to the Subcommittee. Representative Meyer requested that the agency review statutes relating to retention and disposal of records for inclusion in the proposed administrative regulation.

The members approved a motion by Representative Meyer that the Subcommittee request that the Department of Library and Archives explain their selection procedures for allocating federal funds to public libraries, and directed the staff to prepare a memorandum to that effect.

The Subcommittee adjourned at 11 a.m. until August 11, 1986.

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NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.

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